1109

SUPREME COURT OF THE UNITED STATES.

No. 113.

EDWARD FIELD, PLAINTIFF IN ERROR,

vs.

PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICTS OF CALIFORNIA.

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UNITED STATES OF AMERICA,
Districts of California:

Pleas before the Judge of the Circuit Court of the United States for the Districts of California, at the Court House in the City of San Francisco, on the second day of July, of July Term, in the year of our Lord one thousand eight hundred and fifty-five.

Witness the Honorable M. HALL MCALLISTER, Judge of said Court.

DISTRICTS OF CALIFORNIA, *ss:*

Be it remembered, that at the July term, in the year of our Lord one thousand eight hundred and fifty-five, before the Honorable M. Hall McAllister, Judge of the Circuit Court of the United States for the Districts of California, at the Court House in the city of San Francisco, came Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, by S. W. Holladay and C. R. Saunders, Esq'rs, their attorneys, and brought into said Court before the aforesaid Judge thereof, their certain bill, complaint or declaration, against G. D. Wyman, Solomon Brenn, William C. Hoff, R. O. Sturdevant, J. D. Arthur, R. Wheeler, O. Tower, William B. Peake, James H. Ray, "Gilbert & McComb," and Edward Field, defendants, of a plea of trespass and ejectment, which said bill was filed June 5th, A. D. 1855, and follows in these words, that is to say:—

CIRCUIT COURT OF THE UNITED STATES
for the Districts of California, County of San Francisco:

PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD
vs.
G. D. WYMAN, SOLOMON BRENN, WILLIAM C. HOFF, R. O. STURDEVANT, J. D. ARTHUR, R. WHEELER, O. TOWER, WILLIAM B. PEAKE, JAMES H. RAY, "GILBERT & MCCOMB," and EDWARD FIELD.

Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, the plaintiffs herein, who are residents and citizens of the State of Massachusetts, file this their complaint against the above-named Wyman, Brenn, Hoff, Sturdevant, Arthur, Wheeler, Tower, Peake, and Ray, "Gilbert & McComb," and Edward Field, defendants herein, residents and citizens of said County of San Francisco, and State of California, and for cause of action, the plaintiffs aver that they are lawfully entitled to the possession of the following described lot or parcel of land, situate in the city and county of San Francisco, and known and designated on the official map or plan of said city, as Water Lot number 464, being also one of the lots known and de-

signated by law as the San Francisco Beach and Water Lots: Beginning at a point on the westerly line of Davis street, forty-five feet and ten inches southerly from the southerly line of Washington street; running thence southwardly along the westerly line of Davis street forty-five feet and ten inches; thence westwardly parallel with Washington street, one hundred and thirty-seven and a-half feet; thence northwardly parallel with Davis street forty-five feet and ten inches; thence eastwardly parallel with Washington street, one hundred and thirty-seven and a-half feet, to the place of beginning; said lot being 45 feet 10 inches front on Davis street, by 137½ feet deep, and of the value of ten thousand dollars. Plaintiffs aver that they are lawfully entitled to the possession, use and occupation of said lot of land, for a term of ninety-nine years from the 26th day of March, 1851.

Plaintiffs aver that the said defendants have wrongfully and unlawfully entered upon said land, and that they are now in the possession of the same, and now wrongfully and unlawfully hold and detain the possession of said land from the plaintiffs, and refuse to quit and deliver up to the plaintiffs the possession of the same, though the possession thereof has been duly demanded of them the said defendants, to the damage of the plaintiffs in the sum of ten thousand dollars, $10,000.

Wherefore the plaintiffs demand judgment against the said defendants for the possession of said lot or parcel of land above described, and for damages in the sum of ten thousand dollars for the detention thereof, and for costs of suit, and for such other and further judgment or relief as may be just.

HOLLADAY & SAUNDERS,
Att'ys for Plaintiffs.

June 5, 1855.

Summons.

UNITED STATES OF AMERICA,
In the Circuit Court of the United States for the Districts of California:

PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD, Plaintiffs, vs. G. D. WYMAN *et al.*, Defendants.	Action brought in the said Circuit Court and the complaint filed in the city and county of San Francisco, in the office of the Clerk of said Circuit Court.

The President of the United States of America, greeting:

To G. D. Wyman, Solomon Brenn, William C. Hoff, R. O. Sturdevant, J. D. Arthur, R. Wheeler, O. Tower, William B. Peake, James H. Ray, and "Gilbert & McComb."

You are hereby required to appear in an action brought against

you by the above-named plaintiffs, in the Circuit Court of the United States for the Districts of California, and to file your plea, answer, or demurrer, to the complaint filed therein (a copy of which accompanies this summons), in the office of the Clerk of said Court, in the city and county of San Francisco, within ten days (exclusive of Sundays, and the day of service) after the service on you of this summons, if served within this county; or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to eject you (the defendants) from a certain Water Lot, situate in the city and county of San Francisco, known and designated on the official map or plan of said city, as Water Lot No. 464, being also one of the lots known and designated by law as the San Francisco Beach and Water Lots, and to recover one thousand dollars damages for the detention thereof; and if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this seventh day of June, in the year of our Lord one thousand eight hundred and fifty-five, and of our Independence the seventy-ninth.

[SEAL.] Attest, GEO. PEN. JOHNSTON,
Clerk.

Office of the Marshal of the Northern District of California, ss:

I hereby certify that I have received the within summons on the 9th day of June, A. D. 1855, and personally served the same on the 9th, 13th, and 14th days of June, A. D. 1855, by delivering to George S. Gilbert, John McComb, O. Tower, J. D. Arthur, Solomon Brenn, and Wm. B. Peake, on the 9th day of June; Wm. C. Hoff 13th June, and R. O. Sturdevant on the 14th day of June (and G. D. Wyman with copy of complaint June 9th), personally, (James H. Ray and R. Wheeler not found,) a copy of said summons, all of which of the said defendants were served in the city of San Francisco, within three miles of the office of the Clerk of the U. S. Circuit Court.

Dated, San Francisco, Cal., this 14th day of June, A. D. 1855.

WM. H. RICHARDSON,
U. S. Marshal,

by E. C. PALMER,
Deputy Marshal.

And afterwards, to wit, on the 16th day of June, in the year 1855, aforesaid, came the said defendants, and made answer as follows, to wit:—

CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

PARDON G. SEABURY and others
vs.
G. D. WYMAN and others.

And now come the said defendants, G. D. Wyman, Solomon Brenn, William C. Hoff, R. O. Sturdevant, J. D. Arthur, R. Wheeler, J. Tower, William B. Peake, James H. Ray, and Gilbert Z. McComb and Edward Field, and answering the complaint of the said plaintiffs, say that they deny that said plaintiffs were lawfully entitled to the possession of the lands described in said complaint, as therein alleged, or otherwise, or to the use and occupation of the same.

And the said defendants further deny that they have wrongfully or unlawfully entered upon said land, or that they are wrongfully in possession of the same, or that they wrongfully and unlawfully withhold and detain the possession of the same from the plaintiffs, as alleged in said complaint.

And said defendants further deny each and every the allegations and averments in the said complaint set forth and contained.

Dated this 16th day of June, A. D. 1855.

LOCKWOOD, TYLER & WALLACE,
Def'ts' Att'ys.

And afterwards, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and fifty-five, a day of the term aforesaid, at the court house aforesaid, at San Francisco, before the court aforesaid, the following proceedings were had in said cause, and duly entered of record, to wit:—

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Trial set for Monday next (9th July).

And afterwards, to wit, on the 6th day of August, of said term of July, in the year of our Lord one thousand eight hundred and fifty-five, before the Judge aforesaid, at the court house aforesaid, being a term of said court, the following order was duly made and entered in said cause, to wit:—

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

On motion of S. W. Holladay, Esq., attorney for plaintiffs, It is ordered, that a venire for eighteen jurors issue in this cause, returnable Monday, the 20th day of August, A. D. 1855.

Venire.

UNITED STATES OF AMERICA,
State of California:

The President of the United States of America,

To the Marshal of the Northen District of California, greeting:

You are hereby commanded that you cause to come before the Circuit Court of the United States for the Districts of California, to be held at the court room of said court in the city of San Francisco, on Monday, the 20th day of August, A. D. 1855, at eleven o'clock in the forenoon, eighteen good and lawful men, citizens of this State and residents in said District, by whom the truth of the matter then and there to be inquired into shall be the better made known.

And you, the said Marshal, and your deputies, in your, and their proper persons, shall then and there attend, to do all those things which to your and their offices properly appertain; and have you then and there the names of those jurors, and this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this fourteenth day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of our Independence the eightieth.

[SEAL.] Attest, GEO. PEN. JOHNSTON,
Clerk.

Marshal's Return.

In obedience to the within venire, I have summoned and admonished

William Norris,	Caleb Hyatt,	Thomas G. Johnston,
C. J. Dempster,	R. W. Heath,	William Newell,
James H. Cutler,	C. A. Hawley,	F. M. Randall,
Thos. L. Mount,	Eli King,	B. H. Randolph,
R. E. Brewster,	E. Fitzgerald,	Chas. R. Story,
G. A. Swasey,	Walter M. Rockwell, and E. M. Earl,	

to be and appear before the Hon. M. Hall McAllister, U. S. Circuit Judge for the Districts of California, in session on Monday, the 20th day of August, A. D. 1855.

WM. H. RICHARDSON,
U. S. Marshal.

By E. C. PALMER,
Deputy.

And on the sixth day of August, of the year last aforesaid, the following stipulation, by direction of the counsel for the respective parties, was placed upon file in said cause.

CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Testimony of Thomas Sprague, a witness called and sworn by the plaintiffs in the suit in said Court, wherein Seabury *et als.* were pl'ffs, and Patchin *et als.* were defendants, tried about the 12th July, 1855.

"My name is Thomas Sprague; I am the original grantee of Water Lots Nos. 458, 464, and 467, under the sale of water lots held by John W. Geary, Alcalde, January 3, 1850, under the Kearney Grant; I was present at that sale; bid off and took deeds for the three lots numbered as above, in the block now bounded by Clay and Washington, Front and Davis streets, and I made the first payments as per the receipts indorsed on the deeds. At that sale I heard of no adverse claim to these lots; I never heard of any claim to them but mine, till after I sold them. I sold numbers 458 and 464 to Seabury, Gushee and Gifford, on the 17th May, 1850, by deed of that date. Deed No. 2 is the deed I sold by. It bears my signature and was made at the time. If there had been any notice given at the sale of this adverse claim, I should have known it, and I would not have purchased; notice might have been given at the sale, without my hearing it."

The foregoing being the evidence of Thomas Sprague, taken on the trial in the court above-named, of the suit of Seabury *et al.* vs. Patchin *et al.*, involving substantially the same questions as in this the above entitled cause: It is hereby stipulated that the above may be filed and read in evidence on the trial, waiving the necessity of recalling said Sprague, provided said Sprague is absent at the trial.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

July 27, 1855.

CIRCUIT COURT U. S.,
California:

SEABURY *et al.*
vs.
PATCHIN *et al.*

In case a new trial is granted in this case, the above stipulated evidence may be in evidence on the trial thereof.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

July 27, '55.

And afterwards, to wit, on the twenty-first day of August, in the year one thousand eight hundred and fifty-five, being a day of the term aforesaid, at the court house aforesaid, at San Francisco, before the court aforesaid, the following proceedings were had in said cause, and duly entered of record, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause set for trial yesterday—jury excused without being called, until to-day. To-day cause came on for trial. The Marshal returned the venire issued in this cause, having summoned the following named persons to serve as jurors. The jurors were called, answered, and were accepted, rejected, excused, &c., as follows, viz: J. W. Foard (called as talesman, before the empanelling of the jury commenced):

J. W. Foard,	accepted.
Walter M. Rockwell,	peremptorily challenged by pl'ffs' counsel.
Chas. R. Story,	accepted.
C. J. Dempster,	do.
E. M. Earl,	peremptorily challenged by def'ts' counsel.
Caleb Hyatt,	accepted.
E. Fitzgerald,	do.
William Norris,	do.
C. A. Hawley,	do.
G. A. Swasey,	do.
Thomas J. Johnstone,	do.
B. H. Randolph,	do.
Eli King,	peremptorily challenged by def'ts' counsel.
F. M. Randall,	accepted.
R. E. Brewster,	taken sick since answering to his name.
Jas. H. Cutter,	challenged for cause by def'ts' counsel, and excused by Court.
William Newell,	accepted.
R. W. Heath,	excused by the Court because of special and important business.

Thomas L. Mount did not answer, and is entered as a defaulting juror.

The requisite number of jurors having qualified, they were sworn and empanelled "the issue joined to try," as follows, viz:

J. W. Foard,	Chas. R. Story,	C. J. Dempster,
Caleb Hyatt,	E. Fitzgerald,	William Norris,
C. A. Hawley,	G. A. Swasey,	Thomas J. Johnston,
B. H. Randolph,	F. M. Randall, and	William Newell.

S. W. Holladay, Esq. opened the case on the part of the plaintiffs. H. L. Dodge sworn as witness for pl'ffs. R. A. Lockwood, Esq. opened the case on the part of the defendants; (in consequence of

the sickness of an important witness for defence) case adjourned until to-morrow.

And afterwards, to wit, on the twenty-second day of August, in the year last aforesaid, at the court house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. W. C. Parker, Wm. S. Clark, Joseph Galloway, J. D. Stevenson, Edward B. Cutter, sworn for the defence, as witnesses. Cause adjourned until to-morrow at 11 o'clock A. M.

And afterwards, to wit, on the twenty-third day of August, of the term and year last aforesaid, at the court house aforesaid, before the said court, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. Alexander C. Bowman sworn for the defence as witness: (in consequence of the sudden sickness of one of the counsel in the cause, it was adjourned until to-morrow at 11 o'clock A. M.)

And afterwards, to wit, on the twenty-fourth day of August, of the year aforesaid, at the court house aforesaid, being a day of the term last aforesaid, before the court aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. Argument made to the court. Cause adjourned until to-morrow at 11 o'clock A. M.

And afterwards, to wit, on the twenty-fifth day of August, of the year aforesaid, at the court house aforesaid, being a day of the term aforesaid, before the court aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*
Ejectment.

Cause continued from yesterday. Argument resumed and continued until court adjourned.

And afterwards, to wit, on the twenty-seventh day of August, of the year aforesaid, at the court house aforesaid, being a day of the term last aforesaid, before the court aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. George Gordon, Barton Mowry, Thomas Sprague, Joseph Henriques, and R. A. Parker sworn as witnesses for plaintiffs. Cause continued until to-morrow at 11 o'clock A. M.

And on the 28th day of August, 1855, the following stipulation, by direction of the counsel for the respective parties, was placed upon file in said cause:

CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

The following points are admitted in the above entitled cause:

1st. That lot No. 464, the land in dispute, is one of the San Francisco Beach and Water Lots, included in the first section of the act of the Legislature of the State of California, approved March 26, 1851, entitled "An act to provide for the disposition of certain property of the State of California."

2d. That on the 9th day of September, 1850, it was below the usual high-water mark of the Bay of San Francisco, and covered by the tidewaters.

3d. That it is a part of the land included within what is known as Kearney's Grant to the city of San Francisco, on the east front of said town of San Francisco, between the points known as Rincon and Fort Montgomery, and that it is no part of the property known as the Government Reservation.

4th. It is also stipulated that the defendants may, upon the trial, insist on the benefit of the statute of limitations, the same as if specially pleaded; and that they may in like manner rely upon title in themselves, or those under whom they claim.

5th. It is further stipulated that no exceptions shall be taken to the sufficiency of the pleadings, but that the trial shall proceed upon the merits.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

July 2, 1855.

IN THE CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

SEABURY *et als.*
vs.
WYMAN *et als.*

In the above entitled cause it is stipulated as follows:

1st. The plaintiffs in said cause may read in evidence on the trial thereof, the documents known as the Kearney Grant, as the same is printed in the book called Wheeler's Land Titles of San Francisco, page 19, with the like effect as if the original were produced, and the execution thereof proved; it being admitted that said Kearney was Brigadier General and Governor of California, as stated in said document.

2d. That either party may, upon the trial of said cause, read in evidence the preamble and resolutions of the Town Council of San Francisco of April 1st, 1850, relative to Alcalde Grants, as published on page 20 of said Book of Land Titles, or produce the original, at their option.

3d. That either party may, upon the trial of said cause, produce the original record, if there be any, of a resolution of said council, said to have been passed in October, 1848, relative to Alcalde Grants; and if there be no such record now existing, the defendants may, if they can, give secondary evidence of such resolution. The intention of this third article is to dispense with the accounting for the absence of the original record of such resolution, and to admit secondary evidence thereof, by the defendants. The plaintiffs disputing that such resolution ever passed said council.

4th. It is admitted that the defendants named in the complaint in the said cause, are in possession of the lots in dispute, named in the complaint, under leases resting on the supposed title vested in Edward Field by conveyances from G. W. Wright and J. C. Palmer, and G. W. Wright to said Field, dated respectively, July 9th, 1851, and January 12th, 1853, the production of said leases being dispensed with.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

July 9th, 1855.

And afterwards, to wit, on the twenty-eighth day of August, of the year aforesaid, being a day of the term last aforesaid, at the court house aforesaid, before the court aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. Robert C. Page, W. J. Sperry, Sam'l Brannan, and Edward Bosque sworn for plaintiffs. Argument commenced to the jury, by R. A. Lockwood, Esq., att'y for defendants. Opening waived by S. W. Holladay, Esq., att'y for plaintiffs. Cause continued until to-morrow at 11 o'clock A. M.

And afterwards, to wit, on the twenty-ninth day of August, of the year aforesaid, being a day of the term last aforesaid, at the court house aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. Argument continued by R. A. Lockwood, Esq. S. W. Holladay, Esq., followed for pl'ffs; cause adjourned until to-morrow at 11 o'clock A. M.

And afterwards, to wit, on the thirtieth day of August, of the year aforesaid, being a day of the term last aforesaid, at the Court House aforesaid, before the Court aforesaid, the following further proceedings were duly had in said cause, to wit:—

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

Cause continued from yesterday. Argument continued for defendants; and was concluded for plaintiffs by S. W. Holladay, Esq. Court having charged the jury, they retired to consult upon their verdict. And now at this day the said jurors come into Court, and through their foreman, do say: "We find for the plaintiffs and assess the damages at one dollar."

On motion of R. A. Lockwood, Esq., counsel for defendants, it is ordered, that there be a stay of proceedings in this cause for thirty days from this date.

And afterwards, to wit, on the fourth day of September, of term aforesaid, in the year last aforesaid, at the Court House aforesaid, before the said Court, the following order was duly made and entered in said cause, to wit:—

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

On motion of S. W. Holladay, Esq., att'y and counsel for plaintiffs,

it is ordered, that judgment be entered in the above entitled cause, pursuant to the verdict in the same.

By the consent of counsel and parties, it is ordered that the complaint and answer filed in this cause be amended by inserting the name of Edward Field, as one of the defendants, pursuant to stipulation on file, dated the "3d of September, A. D. 1855;" in words, terms, and figures, as follows, to wit:

IN THE U. S. CIRCUIT COURT
for the Districts of California:

PARDON G. SEABURY & others
vs.
G. D. WYMAN & others.

In the above entitled cause it is agreed by the parties, plaintiffs and defendants, and by Edward Field (under whom the original defendants hold), that the said Edward Field be made a defendant to this suit, by inserting his name in the complaint and answer, and that the final judgment on the verdict be entered as well against him as the said original defendants.

And it is further agreed by all parties, that the said Edward Field may sue out and prosecute a writ of error in the Supreme Court of the United States upon said judgment in his own name alone, without joining the said other defendants, as if said Field were sole defendant in the action; and that no objection shall be taken either in this Court or in said Supreme Court, for the non-joinder of said other defendants in said writ of error; and that said other defendants shall have no control over, or right to interfere in the prosecution of said writ of error, but that the same shall be conducted and prosecuted solely by said Edward Field.

And it is further agreed by the plaintiffs, with the said original defendants and the said Edward Field, that upon said Field's suing out such writ of error and filing an approved *supersedeas bond*, there shall be a stay of execution on said judgment as to the said original defendants, pending the said writ of error, and that pending said writ of error, the said original defendants shall and may pay the rents of the premises sued for to their respective lessors or landlords, without being hereafter in any wise responsible or liable to the plaintiffs for any rents, damages, or mesne profits of said premises upon the affirmance of said judgment by said Supreme Court; and that in case of such affirmance, the said plaintiffs will not look to the said original defendants, or any of them, for any damages, rents, or mesne profits of said premises up to the time of notice of such affirmance, but will look exclusively to the said Edward Field and the said *supersedeas bond* for all such damages, rents, and mesne profits; and it is further agreed and declared that this present agreement be filed of record in said Court, and constitute a part of the

record of said cause as well in this Court as in said Supreme Court.

Dated September 3d, 1855.

LOCKWOOD, TYLER & WALLACE,
Att'ys for said Edward Field & said original Def'ts.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

Memo. The intention and meaning of the foregoing agreement is, that the pl'ffs shall not (upon the filing of such *supersedeas bond* as aforesaid), hold the said original def'ts responsible for any rents, or damages, before or since the commencement of this suit, up to the time of notice of judgment of affirmance by the said Supreme Court; but leaving the pl'tffs at liberty to sue the said Field, or any other parties than said original def'ts, for any such or other rents, damages, or mesne profits. It is also further stipulated by the parties that the matter in controversy in this suit exceeds the value of two thousand dollars.

Dated Sept. 3d, 1855.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

And on the fourth day of September, in the year one thousand eight hundred and fifty-five, judgment was entered in said cause, in words, terms, and figures, as follows, to wit:

UNITED STATES OF AMERICA,
State of California:

In the Circuit Court of the United States for the Districts of California.

PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD
vs.
G. D. WYMAN, SOLOMON BRENN, WILLIAM C. HOFF, R. O. STURDEVANT, J. D. ARTHUR, R. WHEELER, O. TOWER, WILLIAM B. PEAKE, JAMES H. RAY, "GILBERT & MCCOMB," and EDWARD FIELD.

This cause came on regularly for trial, S. W. Holladay, Esq. as attorney, and C. R. Saunders Esq. of counsel, appearing for the plaintiffs, and Rufus A. Lockwood, Esq. of counsel for the defendants.

When, a jury being duly accepted, empanelled, and sworn in the cause, witnesses were duly sworn and examined for the plaintiffs and

defendants, and documentary proof introduced by the parties respectively.

The evidence being closed and counsel for the parties being heard in argument, and the charge of the Court being given, the jury retired for consideration, and subsequently returned into Court, and in answer to their names, say: "We find for the plaintiffs and assess the damages at one dollar." Wherefore by reason of the law and the evidence in the case and the verdict aforesaid, and by the consideration of the Court, it is ordered, adjudged, and decreed, by the Court that the said plaintiffs, Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, do have and recover of the defendants herein, G. D. Wyman, Solomon Brenn, William C. Hoff, R. O. Sturdevant, J. D. Arthur, R. Wheeler, O. Tower, William B. Peake, James H. Ray, "Gilbert & McComb," and Edward Field, the possession of the lot of land or premises in the complaint mentioned, that is to say, the following described lot or parcel of land, situate in the city and county of San Francisco, and known and designated on the official map or plan of said city as water lot number 464, being also one of the lots known and designated by law as the San Francisco Beach and water lots—beginning at a point on the westerly line of Davis Street, forty-five feet and ten inches southerly from the southerly line of Washington Street, running thence southwardly along the westerly line of Davis Street, forty-five feet and ten inches, thence parallel with Washington Street, westwardly one hundred and thirty-seven and a half feet, thence northwardly parallel with Davis Street, forty-five feet and ten inches, thence eastwardly parallel with Washington Street one hundred and thirty-seven and a half feet, to the place of beginning; said lot being 45 feet 10 inches front on Davis Street, by 137½ feet deep, and that the said plaintiffs have a writ of possession commanding the marshal to remove the said defendants and all persons claiming under them, from the said premises, and to put the said plaintiffs into the possession thereof, and also that the plaintiffs have and recover of the said defendants the sum of five hundred and thirty-one $\frac{60}{100}$ dollars, their costs and disbursements in this action, and that the said plaintiffs have execution therefor against the said defendants.

Dated San Francisco, September 4th, A. D. 1855.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dist. of Cal'a.

And afterwards, to wit, on the twelfth day of September, in the year 1855, aforesaid, came the defendants aforesaid, by their attorneys, Lockwood, Tyler, and Wallace, and filed their bill of exceptions in the cause aforesaid, which said bill is in words, terms, figures, and endorsements as follows, to wit:—

IN THE CIRCUIT COURT OF THE UNITED STATES
for the District of California:

WYMAN and others ads. SEABURY and others.

Be it remembered that on the trial of the above entitled cause, before the Court and jury, the plaintiffs to support the issue on their part, produced and offered in evidence the hereinafter recited grant from John W. Geary, Alcalde, &c. to Thomas Sprague and three receipts thereon endorsed, and hereinafter recited. And the plaintiffs called as a witness one H. L. Dodge, who testified that he was a subscribing witness to said grant, and that the same was executed and delivered by Geary to said Sprague about the time of its date; and that the signatures to the receipts indorsed on said grant, are in the handwriting of the persons whose names are signed thereto, and that said persons held the offices of Alcalde, City Treasurer, and City Comptroller, of the city of San Francisco, respectively at the dates of said receipts; said witness further testified that several hundred similar grants were executed by said Geary at the same date, for lots sold at the city sale of water lots on the 3d of January, 1850, to various persons, and that duplicates of all the grants, with the name of said Geary printed instead of signed, at the foot thereof, were retained in the Alcalde's office (but that his name was signed in writing to the grants issued); whereupon the defendants objected to any evidence relating to such duplicates unless the same were produced, and the Court sustained the objection, and said duplicates were not produced. Whereupon the plaintiffs, without any further preliminary evidence, offered in evidence said grant and receipts thereon; and the defendants at the proper time, objected to the admissibility of said grant as evidence of title to the premises sued for without proof that three months' previous notice of the sale of January 3d, 1850, had been given pursuant to the terms of the Kearney grant hereinafter recited; but the Court overruled the objection, and ruled that the recitals in said grant were *prima facie* evidence that such notice had been given; to which opinion and ruling of the Court the defendants at the proper time, duly excepted; and the plaintiffs then read in evidence to the jury the said grant, in the words and figures following, to wit: "To all persons to whom these presents shall come or concern; the town of San Francisco, in the territory of California, by John W. Geary, first Alcalde of San Francisco, greeting; Whereas, S. W. Kearney, former Governor of the territory of California, did (by decree given at Monterey, then the capital of California, on the tenth day of March, in the year of our Lord one thousand eight hundred and forty-seven), grant, convey, and release, unto the town of San Francisco, the people or corporate authorities thereof, all the right, title, and interest of the govern-

ment of the United States, and of the territory of California, in and to the beach and water lots, on the east front of said town of San Francisco, included between the points known as the Rincon and Fort Montgomery, excepting such lots as might be selected for the use of the United States government, by the senior officers of the army and navy then here, provided said ground, thereby ceded, should be divided into lots, and sold by public auction to the highest bidder, after three months' notice previously given. And whereas, by virtue of said grant, and by direction of the Ayuntamiento, a certain portion of said ground, duly divided into lots, as aforesaid, after the required notice had been given, in accordance with said decree, was exposed to sale at public auction, on the third day of January, A. D. eighteen hundred and fifty, and one of said lots so ordered to be sold, numbered on the map of said town, four hundred and sixty-four, was sold to Thomas Sprague for the sum of seventeen hundred dollars, being the highest price then and there offered for the same.

Therefore, by virtue of the authority in me vested, and in pursuance of the order of the Ayuntamiento or town council of the town of San Francisco, I, John W. Geary, first Alcalde as aforesaid, for and in consideration of four hundred and twenty-five dollars to me in hand paid, in trust for said town, before the delivery of these presents (and the receipt of which is hereby acknowledged), and for the further consideration of the sum of twelve hundred and seventy-five dollars, to be paid to me and to my successors in office (in trust for the said town of San Francisco), in three equal payments, to wit, on the third day of April, the third day of July, and the third day of October, in the year aforesaid; do grant, bargain, sell, assign, convey, and confirm unto the said Thomas Sprague, his heirs and assigns, forever, the said water lot, numbered four hundred and sixty-four, situated in said town, on Davis Street: Together with all and singular, the advantages and profits whatsoever, in and to the same belonging or in any manner appertaining, and also all the estate, right, title, interest, property, claim, and demands whatsoever of the said town of San Francisco in and to any and every part thereof; to have and to hold all and singular the above described lot of ground, as fully as the same was held and possessed by the said town of San Francisco, as aforesaid, unto the said Thomas Sprague, his heirs and assigns, to the only proper use and behoof of the said Thomas Sprague, his heirs and assigns forever. Provided, that the said Thomas Sprague, his heirs and assigns, shall well and truly make, or cause to be made, each and every of the several payments before mentioned, at or before the days upon which they severally become due; otherwise this grant to be void, and all payments previously made thereon shall be forfeited to the use of said town. And it is further agreed that said Thomas Sprague, his heirs and assigns, may take and hold possession of said lot until default be made in any one of said payments.

In testimony whereof, I, the said John W. Geary, first Alcalde,

as aforesaid, have hereunto set my hand and official seal, this third day of January, in the year of our Lord one thouand eight hundred and fifty.

[OFFICIAL SEAL.]

JNO. W. GEARY,
First Alcalde of San Francisco.

Signed, sealed, and delivered in presence of
J. HERON FOSTER,
H. L. DODGE."

And the defendants likewise objected to the admissibility in evidence of the said receipts indorsed on said grant, on the grounds that the same were mere declarations of third persons, and irrelevant; but the Court overruled said objection, and ruled that said receipts were admissible in evidence; to which opinion and ruling of the Court, the defendants, at the proper time, excepted; and the plaintiffs then read in evidence to the jury the said receipts, in the words and figures following, to wit:

"*Receipt for Second Payment.*

SAN FRANCISCO, April 3, 1850.

Received from Thomas Sprague (in trust for the town or city of San Francisco) the sum of four hundred and twenty-five dollars, being in full of the second payment on the within deed, due and payable this day.

JOHN W. GEARY,
First Alcalde."

"*Receipt for Third Payment.*

SAN FRANCISCO, July 3, 1850.

Received from Thomas Sprague (in trust for the town or city of San Francisco) the sum of four hundred and twenty-five dollars, being in full of the third payment on the within deed, due and payable this day.

CHAS. G. SCOTT,
City Treasurer.

BENJ'N L. BERRY,
Comptroller."

"*Receipt for Fourth and final Payment.*

SAN FRANCISCO, Oct. 3, 1850.

Received from Messrs. Seabury, Gifford, and Gushee (in trust for the town or city of San Francisco), the sum of four hundred and

twenty-five dollars, being in full of the fourth and final payment on the within deed, due and payable this day.

CHAS. G. SCOTT,
City Treasurer.

BENJ'N L. BERRY,
Comptroller."

The plaintiffs then produced and offered in evidence the hereinafter recited two deeds, dated May 17, 1850, and April 20, 1855, after proving the execution thereof by the grantors to the grantees, respectively; and the defendants, at the proper time, objected to the admissibility of said deeds as evidence, without proof that the grantors were in possession of, or had title to the premises in suit; but the Court overruled said objection; to which opinion and ruling of the Court, the defendants, at the proper time, excepted; and the plaintiff then read in evidence the said two deeds, in the words and figures following, to wit:—

Know all men by these presents: That I, Thomas Sprague, of San Francisco, in the State of California, in consideration of four thousand dollars, to me paid by Pardon G. Seabury, Horace Gushee, and Henry B. Gifford, of the same city of San Francisco, the receipt whereof is hereby acknowledged, do, by these presents, grant, remise, release, and forever quit claim unto the said Seabury, Gushee, and Gifford, their heirs and assigns, all my right, title, and interest of, in, and to those certain lots of land situated in said San Francisco, between Front street and Davis street, and known and designated on the map or plan of said San Francisco, as water lots, numbered four hundred and fifty-eight (458) and four hundred and sixty-four (464), being the same lots to me conveyed by John W. Geary, Alcalde of San Francisco, by deeds bearing date the third day of January, A. D. 1850, and recorded in "Book of Records for water lots, sold in January, 1850," on pages 156 and 162, as by reference to said deeds, hereunto attached and made part hereof, will more fully appear: To have and to hold the above released premises, with the privileges and appurtenances thereunto belonging, to the said Seabury, Gushee, and Gifford, their heirs and assigns, to their use and behoof forever. And I, the said Thomas Sprague, do hereby covenant with the said Seabury, Gushee, and Gifford, their heirs, executors, administrators, and assigns, that I will warrant and defend the aforesaid premises to them, the said Seabury, Gushee, and Gifford, their heirs, executors, administrators, and assigns, against the lawful claims of all persons claiming from, by, or under me, excepting certain payments to be made to the town of San Francisco, amounting in all to the sum of sixteen hundred and fifty dollars ($1,650), according to the conditions of respective deeds above mentioned. And this conveyance is made subject to said payments, and on the condition that the said Seabury, Gushee, and Gifford, or their

assigns, shall pay the same at the times when the same severally become due. In witness whereof, I, the said Thomas Sprague, have hereunto set my hand and seal this seventeenth day of May, in the year one thousand eight hundred and fifty.

THOMAS SPRAGUE. [SEAL.]

Executed and delivered in the presence of

EDMUND B. HOOD,
JOHN MCVICKAR."

"This Indenture, made the twentieth day of April, in the year one thousand eight hundred and fifty-five, between Horace Gushee, party of the first part, and Ward M. Parker, of New Bedford, Massachusetts, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, confirmed, and conveyed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the right, title, and interest of the party of the first part, in the following described lot of land in the city of San Francisco, situated in the block bounded by Clay, Washington, Front, and Davis streets, and known and designated on the map of the city of San Francisco as water lot numbered four hundred and sixty-four, beginning on the westerly line of Davis street, 45 feet 10 inches southerly from the south-west corner of Washington and Davis street; thence running southerly along the line of Davis street 45 feet 10 inches; thence westwardly, parallel with Washington street, 137 feet 6 inches; thence northwardly 45 feet 10 inches; thence eastwardly 137 feet 6 inches to Davis street, the place of beginning: Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand, whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the above described premises, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said H. Gushee, for his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof, the above mentioned and

described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged, or encumbered in any manner or way whatsoever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

HORACE GUSHEE. [SEAL.]

Sealed and delivered in the presence of
HENRY HESKETH.

And thereupon, the following written stipulations, signed by the Counsel for both parties, were read in evidence to the jury, to wit:—

"CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

The following points are admitted in the above entitled cause:—

1st. That lot 464, the land in dispute, is one of the San Francisco beach and water lots included in the first section of the Act of the Legislature of the State of California, approved March 26, 1851, entitled an Act to provide for the disposition of certain property of the State of California.

2d. That, on the 9th day of September, 1850, it was below the usual high-water mark of the Bay of San Francisco, and covered by the tide-waters.

3d. That it is a part of the land included within what is known as Kearney's grant to the city of San Francisco, on the east front of said town of San Francisco, between the points known as the Rincon and Fort Montgomery, and that it is no part of the property known as the Government Reservation.

4th. It is also stipulated that the defendants may, upon the trial, insist on the benefit of the statute of limitations, the same as if specially pleaded; and that they may in like manner rely upon title in themselves, or those under whom they claim.

5th. It is further stipulated that no exception shall be taken to the sufficiency of the pleadings: but that the trial shall proceed upon the merits.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

HOLLADAY & SAUNDERS,
Atty's for Pl'ff's.'

July 2, 1855.

"CIRCUIT COURT,
Districts of Cala.:

P. G. SEABURY *et als.*
vs.
WYMAN *et als.*

In the above entitled cause it is stipulated as follows:—

1st. The plaintiff in said cause may read in evidence, on the trial thereof, the document known as the Kearny grant, as the same is printed in the book called *Wheeler's Land Titles of San Francisco*, page 19, with the like effect as if the original were produced and the execution thereof proved, it being admitted that said Kearny was Brigadier Gen'l and Governor of California, as stated in said document.

2d. That either party may, upon the trial of said cause, read in evidence the preamble and resolution of the Town Council of San Francisco, of April 1st, 1850, relative to Alcalde grants, as published on page 20 of said book of Land Titles, or produce the original at their option.

3d. That either party may, upon the trial of said cause, produce the original record, if there be any, of a resolution of said Council, said to have been passed in October 1848, relative to Alcalde grants, and if there be no such record now existing, the defendants may, if they can, give secondary evidence of such resolution; the intention of this 3d article is to dispense with accounting for the absence of the original record of such resolution, and to admit secondary evidence thereof by the defendants. The plaintiffs disputing that such resolution ever passed said Council.

4th. It is admitted that the defendants named in the complaint in the said cause, are in the possession of the said lot under leases vested in Edward Field, by conveyance from G. W. Wright and J. C. Palmer, and G. W. Wright to said Field, dated respectively, July 9, 1851, and January 12, 1853, the production of the said leases being dispensed with.

Dated July 9, 1855.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

And therefore the plaintiffs read in evidence to the jury the said Kearny Grant, in the words and figures following, to wit:

"I, Brigadier-General S. W. Kearny, Governor of California, by virtue of authority in me vested by the President of the United States of America, do hereby grant, convey, and release unto the Town of San Francisco, the people, or corporate authorities thereof, all the right, title, and interest of the government of the United

States, and of the Territory of California, in and to the Beach and Water Lots on the East front of said Town of San Francisco, including between the points known as the Rincon and Fort Montgomery, excepting such lots as may be selected for the use of the General Government by the senior officers of the army and navy now there: Provided the said ground hereby ceded, shall be divided into lots, and sold by public auction to the highest bidders, after three months notice previously given. The proceeds of said sale to be for the benefit of the town of San Francisco.

Given at Monterey, capital of California, this 10th day of March, 1847, and in the 71st year of the Independence of the United States.

(Signed) S. W. KEARNY,
Brig.-Gen. and Governor of Cal'a.

And thereupon the plaintiffs, without adducing any further evidence, rested their case.

And thereupon the defendants, to support the issue on their part, produced and offered in evidence the hereinafter recited petition and grant from T. M. Leavenworth, alcalde, &c., to William C. Parker; and the said William C. Parker, being called and sworn as a witness for the defendants, and the said petition and grant being exhibited to him, testified that he is the person named in said petition and grant; that said petition was signed by witness, and presented by him to T. M. Leavenworth, then alcalde of the town and district of San Francisco, and that the said grant (written on the same sheet of paper with the said petition) was executed and delivered by the said Leavenworth, as such alcalde, to the witness, on the 25th day of September, 1848; and that said grant remained in possession of witness a long time after its execution. And the plaintiffs having cross-examined said Parker, as to the execution of said grant, then proposed to further cross-examine him for the purpose of proving fraud between said Leavenworth and Parker in the issuing of said grant, and in reconveying to said Leavenworth, on the next day, the lot thereby granted; but by consent of both parties, such further cross-examination was postponed till the defendants should have concluded their evidence.

The defendants then produced the hereinafter recited deed from said Parker to said Leavenworth; and the same being exhibited to said Parker, he testified that the same was executed by him to said Leavenworth on the 26th day of September, 1848; and the plaintiffs dispensed with the calling or accounting for the absence of the subscribing witnesses to said deed.

The defendants also produced and proved the execution of the hereinafter recited deeds from said Leavenworth to George W. Wright, dated December 1st, 1849, and from said Wright to Charles T. Botts, dated February 26, 1850, and from said Wright to Edward Field, dated July 9th, 1851, and from said Botts to Joseph C. Palmer

and George W. Wright, dated October 1st, 1852, and from said Palmer and Wright to said Edward Field, dated January 12th, 1853, and from Levi Hermance, president of the Board of California Land Commissioners, and Joseph Hopkins, and John S. Love, members thereof, to said Joseph C. Palmer and Edward Jones, dated August 30, 1853 (it being admitted by the defendants that the said Hermance, Hopkins, and Love, were, at the time of executing said deed, president and members of said Board of Commissioners, duly appointed and qualified under the act of May 18th, 1853, entitled "An Act to provide for the sale of the interest of the State of California in the property within the water line front of the city of San Francisco, as defined in and by the act entitled 'An Act to provide for the disposition of certain property of the State of California,' passed March twenty-sixth, one thousand eight hundred and fifty-one)."

The defendants then called J. D. Stevenson as a witness, who, being sworn, and the grant from Leavenworth to Parker being shown him, testified that the said grant was in the possession of witness from March, 1849, till the spring of 1850, with the exception of the time it was in the Recorder's office for record, which was in the fall of 1850, a short time after the reorganization of the records by John W. Geary, who succeeded said Leavenworth in the office of alcalde of San Francisco, about the month of August, 1849; and that Geary got a new set of books, for the purpose of having previous grants re-recorded, or recorded at length in them, prior to which time (under Leavenworth and previous alcaldes) grants were not usually recorded at length, but merely a certificate entered in the records, stating the issuing of the grant; that witness took this grant to the office in November, 1849, to have it recorded at length in Geary's new book, and left it there for record; and shortly afterwards he went to the office and got the grant from Bowman, Geary's clerk, after he had recorded it in book *F* of Land Titles; and that the certificate at the foot of the grant (hereinafter recited) of said Bowman, certifying that the grant was recorded in page 18 of said book, was on said grant when witness took it away from the office as aforesaid; and that the witness retained the grant till after the sale by Leavenworth to Wright, when witness handed it to Palmer, Cook & Co.; that at the time of taking the grant to the office for record, as aforesaid, witness mistook it for his own; that a similar grant by Leavenworth to Parker, of the same date, for the 100 vara lot south of this, on Clay street, had been turned over to witness by Parker, upon their entering into partnership in the spring of 1849; and witness took this grant to the office for record by mistake, instead of the other; and after receiving it back from Bowman, Geary's recording clerk, as before stated, handed it to Palmer, Cook & Co.

The defendants then produced from the office of the Recorder of the county of San Francisco, a book of records, called Book *B* of District Records, and another book of records, called book *F* of Land Titles; and H. L. Dodge, sworn as a witness for defendants, testified

that he was clerk in the alcalde's office of San Francisco from August, 1849, until the organization under the city charter in 1850; that the said book *F* was a book of record in said office during that time; that the entry on page 18 of said book (hereinafter recited) is in the handwriting of Bowman, who was acting as recording clerk in said office during that time; that the said book *F* was one of the books of records turned over by Geary to the county recorder in May, 1850; that the said book *B* of District Records was a book of records in the alcalde's office while witness was clerk in said office, as aforesaid; and was turned over by Geary to the County Recorder with said book *F* in May, 1850; that the said book *B*, with some others like it, is the only book known to witness, prior to book *F*, showing the grants made by alcaldes, or in which any notice was taken of alcaldes' grants; that there were some other books; that book was the first book of records opened under Geary's administration; that some others had been started before, and were afterwards filled up; that there were one or two books of original grants; that Leavenworth kept his entries of grants in the manner they appear in said book *B* of District Records, and in no other manner; that the other records of grants were those made by Hyde, Bartlett, and Bryant, predecessors of Leavenworth, some of whose grants, I think, were recorded at length, but others were merely noted, or entered, like those of Leavenworth; that witness saw said book *B* in Geary's office, and afterwards in the County Recorder's office; that no book after it came into Geary's office was exer missing out of it. When Geary came into office in August, 1849, it was some time before all the papers and records came into his possession; that witness is of the impression, but is not positive, that said book *B* was one of the books so missing; it might have been withheld for two or three months; there were two or three books withheld; application for them was made to Leavenworth several times; and he afterwards sent them to the office; that the entry on page 31 of said book *B* (hereinafter recited), is in the handwriting of said Leavenworth, and there are no interlineations, erasures, or other suspicious circumstance on said page; that said entry existed in said book when it was in Geary's office.

And it was further proved that said book *B* of District Records, and book *F* of Land Titles, had remained in said County Recorder's office from May, 1850, till the present time, and were books of record in said office.

And A. Bowman, being sworn as a witness for defendants, and said grant from Leavenworth to Parker being exhibited to him, testified that the certificate at the foot thereof (hereinafter recited) is in the handwriting of witness, and was made by him at the time of its date; and that witness recorded the grant as stated in said certificate; and said book *F* being exhibited to him, witness testified that the entry therein at page 18 (hereinafter recited), is in his handwriting, and was made by witness in November, 1849, while he was re-

cording clerk in the office of the alcalde of San Francisco; and that the date, September 25th, 1849 (purporting in said entry to be the date of the grant), is a clerical error for September 25th, 1848. Being cross-examined, witness stated that he could not now distinctly remember the fact of recording this identical grant at page 18 of said book *F* otherwise than from seeing the entry in his handwriting, and his certificate at the foot of the grant; but that he had no doubt he did record this petition and grant at page 18 of said book *F*, and that the said entry was made by witness as and for a record of the said petition and grant.

And thereupon the defendants read in evidence to the jury the said petition and grant and certificate, at the foot thereof (the plaintiffs objecting thereto, on the ground that the grant purported to be made by an alcalde of the District of San Francisco, and not of the town or city of San Francisco, and the Court overruling the objection), and which grant and certificate are in the words and figures following, to wit:—

"To T. M. Leavenworth, Alcalde and Chief Magistrate District of San Francisco:

Your petitioner, the undersigned, a citizen of California, respectfully prays the grant of a title of a certain lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, and bounded on the north by Washington street, on the west by a street dividing said lot from the Beach and Water survey, on the south by Clay street, and on the east by unsurveyed land, said lot lying on the east part of the town, outside of the survey, and numbered on the plan marked on page one (1) of District Records as four hundred and fifty-six (456).

WM. C. PARKER."

"TERRITORY OF CALIFORNIA, DISTRICT OF SAN FRANCISCO, September 25th, A. D. 1848.

Know all men by these presents that Wm. C. Parker has presented the foregoing petition for a grant of land in the vicinity of the town of San Francisco, as therein described.

Therefore, I, the undersigned, Alcalde and Magistrate of the District of San Francisco, in Upper California, do hereby give, grant, and convey unto the said Wm. C. Parker, his heirs and assigns, forever, the lot of ground as set forth in the petition, by a good and sufficient title, in consonance with the established customs and regulations, being one hundred varas square, lying and being situated in the eastern vicinity of San Francisco, and outside the limits of the water lot survey.

In testimony whereof I have hereunto set my hand as Alcalde and Chief Magistrate of the Dist. aforesaid.

Done at San Francisco the day and year above written.

T. M. LEAVENWORTH.

Recorded in the Alcalde's office, in book '*F*' of Land Titles, on page number 18, at 10½ o'clock A. M., November 28th, 1849.

A. BOWMAN,
Rec'g Clk."

Office 1st Alcalde, San Francisco.

The defendants also read in evidence to the jury the said entry at page 31 of said book "*B*" (the plaintiffs objecting thereto, as not being a sufficient registry or recording of said grant within the meaning of the act of March 26th, 1851, to provide for the disposition of certain property of the State of California, and the Court overruling the objection), which entry is in the words and figures following, to wit:—

"This is to certify that a lot of land containing one hundred varas square, and bounded on the north by Washington street, on the west by a street dividing said lot from the Beach and water survey, on the south by Clay street, and on the east by unsurveyed land, said lot lying in the east part of the town of San Francisco, and outside of the survey, and numbered on the plan marked on page 1, District Record, four hundred and fifty-six (456), was granted to Wm. C. Parker, and legal, quiet, and perpetual possession of the same given him, his heirs, and assigns forever, September 25th, 1848, said lot lying outside the beach and water lot survey.

Cost $25. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

And the defendants also read in evidence to the jury the said entry at page 18 of said book "*F*" (the plaintiffs objecting thereto on the ground of variance in the date of said grant as it appears in the original grant, and in said entry, and the Court overruling the objection), which entry is in the words and figures following, to wit:—

"*Petition and Grant T. M. Leavenworth to Wm. C. Parker.*

To T. M. Leavenworth, Alcalde and Chief Magistrate District of San Francisco:

Your petitioner, the undersigned, a citizen of California, respectfully prays the grant of a title of a certain lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, and bounded on the north by Washington street, and on the west by a street dividing said lot from the beach and water survey, on the south by Clay street, and on the east by unsurveyed land, said lot lying on the east part of the town, outside of the survey, and numbered on the plan marked on page one (1) of District Record, as four hundred and fifty-six (456).

WM. C. PARKER."

TERRITORY OF CALIFORNIA, DISTRICT OF SAN FRANCISCO, September 25, A. D. 1849.

Know all men by these presents that William C. Parker has presented the foregoing petition for a grant of land in the vicinity of the town of San Francisco, as therein described.

Therefore, I, the undersigned Alcalde and Magistrate of the District of San Francisco, in Upper California, do hereby give, grant, and convey unto the said William C. Parker, his heirs and assigns, forever, the lot of ground as set forth in the petition, by a good, a sufficient title, in consonance with the established customs and regulations, being one hundred varas square, lying and being situated in the eastern vicinity of San Francisco and outside of the limits of the water lot survey.

In testimony whereof I have hereunto set my hand as Alcalde and Chief Magistrate of the Dist. aforesaid.

Done at San Francisco the day and year above written.

T. M. LEAVENWORTH.

A true copy of the original "petition and grant" received November the 28th, A. D. 1849, at 10½ o'c. A. M. of said day.

A. BOWMAN,
Rec'd'g Cl'k.

William S. Clark, sworn as a witness for defendants, testified that he was a member of the Ayuntamiento or town council of San Francisco during the entire year of 1848 and a part of the year 1847; and that the said T. M. Leavenworth was Alcalde of the town of San Francisco during the months of September and October, 1848; that there was a regular meeting of said town council, on the evening of the 11th day of October, 1848, at which witness was present as a member; that a preamble and resolution were passed and adopted by said council, at said meeting, confirming grants made by said Leavenworth as Alcalde; that the preamble and resolution were in writing, and witness read the original manuscript thereof, as the same passed the council; that the same was entered on the record or minutes of the proceedings of the council, and published in a public newspaper, printed and published in the town of San Francisco, on the 14th of October, 1848 (the witness here produced the said newspaper, which contained a *a* printed copy of the said resolution, with other proceedings of the council); that witness knew the said printed copy to be a true copy of the said preamble and resolution, and of the said entry in the minutes of the proceedings of the council, from having compared the said printed copy with the said original manuscript and entry in the minutes; and that the said printed copy had remained in possession of the witness ever since October, 1848.

The defendants then read in evidence to the jury the said printed

copy of the said entry in the record or minutes of the proceedings of the said council (the plaintiffs objecting thereto, on the ground that said resolution was too general in its terms, and did not apply to the land in question, and the Court overruling the objection), and which is in the words and figures following, to wit: "Proceedings of the Town Council, Wednesday evening, Oct. 11th, 1848. Council met pursuant to adjournment on the 9th inst. Present, T. M. Leavenworth, Alcalde; Messrs. Clark, Jones, Mowry & Buckelew. The Alcalde of San Francisco made a statement to the Council, whereupon the following preamble and resolution was offered and unanimously adopted.

"Whereas, T. M. Leavenworth, the present Alcalde, has represented to this body, that he has made grants of several parcels of land adjacent to the town, and that the grants made during the interim of the Council, were for the purpose of raising funds to defray the necessary expenses of the town and district; therefore, Resolved by the Council of the town of San Francisco, That the grants of land made by T. M. Leavenworth, Alcalde of the District of San Francisco, be and are hereby ratified and confirmed."

The plaintiffs then proposed to cross-examine said witness Clark, for the purpose of proving that said resolution was passed by fraudulent collusion between the members of the council; but by consent of parties such cross-examination was postponed till the conclusion of the defendants' evidence.

The defendants also read in evidence to the jury the said deeds from Parker to Leavenworth, from Leavenworth to Wright, from Wright to Botts, from Wright to Field, from Botts to Palmer and Wright, from Palmer and Wright to Field, and from the Board of California Land Commissioners to Palmer and Jones, in the words and figures following, to wit: "This Indenture, made and concluded this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-eight, between William C. Parker, of San Francisco, in the District of San Francisco, Northern Department of Upper California, of the one part, and T. M. Leavenworth of the other part, witnesseth, that the said William C. Parker, for and in consideration of the sum of twenty-five (25) dollars well and duly paid to him, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, transferred, and conveyed, and by these presents doth grant, bargain, sell, transfer, and convey unto the said T. M. Leavenworth, his heirs and assigns forever, all his right, title, and interest of, in, and to all that certain piece and parcel of ground lying and being situated on the eastern limits of the beach and water lot survey, bounded on the north by Washington street, extended on the west by a street dividing said lot from numbers 154, 155, 156, 157, 158 & 159 of the beach and water lot survey, on the south by Clay street, and on the east by the waters of the Bay of San Francisco, said lot consisting of one hundred varas square, and numbered four hundred

and fifty-six (456) on page one, District Record "*B*," said lot comprising twelve (12) lots of the same size as others of the beach and water lot survey, viz: sixteen front by fifty varas deep; being the same lot granted by the Alcalde of the Dist. of San Francisco, 25th day of Sept., A. D. 1848, to Wm. C. Parker, and entered on page 31, Dist. Record "*B*:" To have and to hold all and singular the above described lot of ground as aforesaid, together with all the rights, profits, privileges, and appurtenances whatsoever thereunto belonging, as fully as the same was held and possessed by the said William C. Parker, as aforesaid, unto tbe said T. M. Leavenworth, his heirs and assigns, to the only proper use and benefit and behoof of the said T. M. Leavenworth, his heirs and assigns forever. In witness whereof the said William C. Parker has hereunto set his hand and seal, in the town of San Francisco, the day and year first mentioned.

WM. C. PARKER. [L. S.]

Signed, sealed, and delivered in presence of us,

HENRY D. COOK,
H. GILLINGHAM,
CHARLES DURTIN.

Recorded in the Alcalde's office, San Francisco, in Book *B* of Land Titles, pages 311 and 312, December 1st, 1849, at 4¼ o'clock P. M.

J. F. HOWE,
Recording Clerk.

Know all men, by these presents, that I, T. M. Leavenworth, of San Francisco, Territory of California, United States of America, for and in consideration of the sum of five thousand dollars, paid to him full satisfaction, the receipt whereof is hereby acknowledged, by George W. Wright, of San Francisco, in the said Territory of California, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said George W. Wright, his heirs and assigns, forever, all my right, title, interest, and estate in and to a certain tract or parcel of land, lying and being numbered four hundred and fifty-six, on page one, Dist. Record *B*, comprising twelve lots of the same size as the Beach and Water lots, said lot lying in San Francisco, and bounded on the north by Washington street; east by the waters of the Bay; south by Clay street, and west by the street on the easterly side of the Beach and water survey by J. O'Farrel, and comprising one hundred varas square, or four fifty vara lots; which said tract or parcel of land was derived to me, the said T. M. Leavenworth, from W. C. Parker, of San Francisco, by deed bearing date the twenty-sixth day of September, A. D. one thousand eight hundred and forty-eight, reference being had to the said deed now on record in the archives of San Francisco: To have and to hold the above granted and bargained premi-

ses, with all the privileges and appurtenances thereof, to the said George W. Wright, his heirs and assigns, to his and their own use and behoof forever; and I, the said T. M. Leavenworth, do, by these presents, covenant to warrant and defend the said George W. Wright, his heirs and assigns, in the title to the said premises from me and my heirs and assigns, forever. In witness whereof, I hereunto set my hand and seal, this first day of December, in the year of our Lord one thousand eight hundred and forty-nine.

T. M. LEAVENWORTH. [SEAL.]
HENRY J. McKINLY. [SEAL.]

Signed, sealed and delivered in presence of
JOSEPH C. PALMER.

TERRITORY OF CALIFORNIA,
Jurisdiction of San Francisco:

At San Francisco, this first day of December, A. D. 1849, personally appeared T. M. Leavenworth (and Henry J. McKinly) and acknowledged this instrument, by them sealed and subscribed. to be their free act and deed. Before me, JOHN W. GEARY,
1*st Alcalde.*

Recorded in the office of the Alcalde, in Book *F* of Land Titles, on page 44, &c., at 4¼ o'clock P. M. of the 1st day of December, 1849.
A. BOWMAN,
Recording Clerk.

Office 1*st Alcalde, San Francisco.*

Know all men by these presents, that I, George W. Wright, by my lawful attorney, Joseph C. Palmer, constituted such by a power of attorney executed the day of , and recorded in the office of the Alcalde of San Francisco, have, for valuable consideration, bargained and sold, by these presents do grant and convey unto Charles F. Botts and his heirs forever, an undivided moiety of all the right, title, and interest to a certain lot of land numbered four hundred and fifty-six, on page one, Dist. Record *B*, lying in San Francisco, bounded on the north by Washington street; east by the waters of the Bay; south by Clay street; on the west by the street on the eastern side of the Beach and water survey made by J. O'-Farrel, that accrued to me from a deed of conveyance executed by T. M. Leavenworth and Henry J. McKinly, bearing date the first day of December, 1849, recorded in the office of the Alcalde of San Francisco, in Book *F*, p. 44, wherein the aforesaid lot is more fully described.

Given under my hand and seal this twenty-sixth day of February, 1850.
GEORGE W. WRIGHT, [SEAL.]
by his Att'y,
J. C. PALMER.

Witness—GEO. W. COOK,
EDWARD JONES.

STATE OF CALIFORNIA, }
County of San Francisco, } ss.

On this 28th day of April, A. D. 1851, before me, a Notary Public in and for the county aforesaid, personally appeared J. C. Palmer, to me known to be the person described in the foregoing instrument, as the attorney in fact of George W. Wright, who acknowledged that he executed the same voluntarily, as the act and deed of the said George W. Wright. Witness my hand and official seal the day and year above written.

[SEAL.] C. TEMPLE EMMET,
Notary Public.

A true copy of the original, recorded May 1st, 1851, at 10 o'clock and 30 m. A. M.

JOHN A. McGLYNN,
County Recorder.

This indenture, made and concluded this ninth day of July, A. D. one thousand eight hundred and fifty-one, between George W. Wright, of San Francisco, California, by his attorney in fact, Joseph C. Palmer, party of the first part, and Edward Field, of Nantucket, county of Nantucket, State of Massachusetts, party of the second part, witnesseth that the said George W. Wright, for and in consideration of the sum of twenty-three thousand four hundred and thirty dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, quit-claimed, and conveyed, and does by these presents grant, bargain, sell, quit-claim, and convey unto the said Edward Field and his heirs and assigns forever, all the right, title, interest, estate, claim, and demand of the said George W. Wright of, in and to the equal undivided one-half ($\frac{1}{2}$) of all those lots of ground in the city of San Francisco aforesaid, known and described as follows: being all those lots or parcels of ground in said city, which are bounded on the west by Front street; on the north by Washington street; on the east by Davis street; on the south by Clay street; excepting and reserving therefrom the lots known upon the map of said city as lots number four hundred and sixty-seven (467), and four hundred and sixty-eight (468), the same having been heretofore conveyed to Samuel Brannan. It is intended by this conveyance to convey to the said Edward Field, his heirs and assigns, forever, the equal undivided one-half of all the lots in the block above described, saving and excepting therefrom the two lots mentioned: To have and to hold, with all and singular the hereditaments and appurtenances thereunto belonging, unto the said party of the second part, as fully as the same was owned, held, and possessed by the said party of the first part, to the sole use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever. In witness whereof the said party of the first part

has hereunto affixed his hand and seal, the day and year first above written, at San Francisco, California.

GEORGE W. WRIGHT, [SEAL.]
by his Att'y,
J. C. PALMER.

Signed, sealed and delivered in presence of
ALBERT E. FIELD,
F. R. RUNKER.

STATE OF CALIFORNIA,
County of San Francisco, } ss.

On this 9th day of July, A. D. 1851, before me, a Notary Public in and for said county, personally appeared the above named Joseph C. Palmer, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily, as the act and deed of the said George W. Wright, by himself, as his duly authorized attorney, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[SEAL.] HENRY H. HAIGHT,
Notary Public.

San Francisco Co., Cal.

Recorded in the office of the County Recorder of San Francisco, in Liber 5 of Deeds, page 344, July 9th, 1851, at ¼ to 3 o'c. P. M.

JOHN A. McGLYNN,
County Recorder.

by JAS. O. GRADY,
Deputy.

Know all men by these presents, that I, Charles T. Botts, for and in consideration of the sum of forty thousand dollars, secured to me by Joseph C. Palmer and George W. Wright, have bargained and sold, and by these presents do release and quit-claim unto the said Palmer and Wright, and their heirs, forever, all my right, title, and interest in and to an undivided moiety of ten water lots in San Francisco, lying within the square bounded by Washington and Clay, Front and Davis streets, numbered on the map of the city as 457, 458, 459, 460, 461, 462, 463, 464, 465, 466: To have and to hold in a manner as full and complete as the same was vested in me, by deed of conveyance from the said George W. Wright to me, bearing date the 26th day of February, 1850.

In witness whereof I have hereunto set my hand and affixed my seal this first day of October, 1852.

CHAS. T. BOTTS. [L. S.]

STATE OF CALIFORNIA, }
County of San Francisco. }

On the 3d day of November, 1852, before me, a Notary Public in and for the county aforesaid, personally appeared Charles T. Botts, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same voluntarily, for the purposes therein mentioned. Given under my hand and notarial seal, the day and year above written.

[SEAL.] WM. N. KEENEY,
Notary Public.

Recorded in the office of the County Recorder, at San Francisco, in Liber 12 of Deeds, page 626, Nov. 3d, 1852, a 4 P. M.

THOS. B. BOWMAN,
Co. Recorder,

per JO. CLEMENTS,
Deputy.

This Indenture, made the twelfth day of January, in the year one thousand eight hundred and fifty-three, between Joseph C. Palmer and George W. Wright, of the city of San Francisco and State of California, parties of the first part, and Edward Field, of the town of Nantucket, State of Massachusetts, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seventy-five thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released and quit-claimed, and by these presents do remise, release, and quit-claim unto the said party of the second part, and to his heirs and assigns, forever, all their right, title, and interest in and to an undivided moiety of ten water lots, in said city of San Francisco, lying within the square bounded by Washington and Clay, Front and Davis streets; said lots being numbered on the map of the city as four hundred and fifty-seven (457), four hundred and fifty-eight (458), four hundred and fifty-nine (459), four hundred and sixty (460), four hundred and sixty-one (461), four hundred and sixty-two (462), four hundred and sixty-three (463), four hundred and sixty-four (464), four hundred and sixty-five (465), and four hundred and sixty-six (466); together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances: To have and to hold, all and singular, the above mentioned and

described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSEPH C. PALMER, [L. S.]
GEORGE W. WRIGHT, [L. S.]
by his Att'y,
J. C. PALMER.

Sealed and delivered in the presence of
EDWARD BOSQUI,
HENRY B. JONES.

STATE OF CALIFORNIA, } ss.
County of San Francisco, }

On this 12th day of January, in the year of our Lord one thousand eight hundred and fifty-three, before me came Joseph C. Palmer and George W. Wright (by his att'y, Joseph C. Palmer, who is duly authorized to act as such att'y, by virtue of a certain power of att'y, dated Dec. 30, 1849, recorded Dec. 31st, 1849), to me known to be the individual described in and who executed the within instrument, and acknowledged that they executed the same of their own free act and deed, and for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.] HENRY B. JONES,
Notary Public.

San Francisco County, California.

Recorded in Recorder's office, county of San Francisco, Liber 19 of Deeds, page 399, January 11, 1853, 2 o'c. P. M.

THOS. B. RUSSUM,
County Recorder.

This Indenture, made and entered into this thirtieth day of August, A. D. eighteen hundred and fifty-four, between Levi Hermance, president of the Board of California Land Commissioners, Joseph Hopkins and John S. Love, members thereof, of the first part, and Joseph C. Palmer and Edward Jones, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of fourteen hundred and twenty-five dollars, in hand paid by the party of the second part to the State of California, the receipt whereof is hereby acknowledged by us as Commissioners on the part of the State, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim unto the said party of the second part, and to their heirs and assigns, forever, all the right, title, and interest of the State of California in the following de-

scribed piece or parcel of land, situated, lying, and being within the city of San Francisco, county of San Francisco, and State of California, known and described as follows, to wit: Commencing on the south-east corner of Washington and Front streets; thence southerly along Front street two hundred and seventy-five feet; thence at right angles easterly along Clay street one hundred and thirty-seven feet six inches; thence at right angles northerly ninety-one feet eight inches; thence at right angles easterly one hundred and thirty-seven feet six inches, to Davis street; thence northerly along Davis street one hundred and eighty-three feet four inches; thence at right angles westerly along Washington street two hundred and seventy-five feet, to place of beginning, being known on the official map of said city as original water lots 457, 458, 459, 460, 461, 462, 463, 464, 465, and 466: Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, which are or may hereafter be the property of the State of California, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, which may be due or become due to the State of California, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances, as aforesaid: To have and to hold all and singular the above mentioned and described premises, together with the appurtenances as aforesaid, unto the said party of the second part, their heirs and assigns, forever. In witness whereof the said parties of the first part, for and on behalf of the State of California, have hereunto set their hands and seals this day and year first above written. LEVI HERMANCE, *Pres't*, [L. S.]
JOSEPH HOPKINS, [L. S.]
JNO. S. LOVE. [L. S.]

STATE OF CALIFORNIA,
County of San Francisco, } ss.

Be it known, that on the thirtieth day of August, 1854, personally appeared before me, the subscriber, a Notary Public for the State and county aforesaid, Levi Hermance, presd't; and Joseph Hopkins and John S. Love, personally known to me to be the persons who are described in, and who executed, the foregoing deed, and who acknowledged that they are Commissioners for the State of California, executed the same freely and voluntarily, for the uses and purposes therein mentioned. In testimony whereof I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[SEAL.] A. A. SELOVER,
Notary Public.

Recorded in County Recorder's office, San Francisco, April 5, 1855, at 2¼ P. M., in Liber 48 of Deeds, page 520.

JAMES GRANT,
County Recorder.

The defendants also produced from the said County Recorder's office the original books of record referred to in the certificate or notes of recording annexed to said deeds, and proved and gave in evidence that said deeds were respectively recorded at length in said books of record, as stated in said certificates or notes of recording (the plaintiffs objecting to said proof and evidence, and the Court overruling the objection). Captain Galloway, sworn as a witness for the defendants, testified that he knew the one hundred vara lot, of which the lot sued for is part, since May, 1850, at which time witness was employed by Palmer, Cook & Co. (composed of the before mentioned Joseph C. Palmer, Charles W. Cook, George W. Wright, and Edward Jones), to drive piles at the corners of said lot; and witness accordingly did, in May, 1850, drive one pile at each of the four corners of said 100 vara lot, for the purpose of marking the boundaries, and taking possession of said lot; and that he had the lot surveyed by the city surveyor, and set the piles at the corners as aforesaid under the direction of said surveyor. On cross-examination, the witness stated that said lot, at the time of driving said piles, was an open water lot in the Bay of San Francisco, and that the nearest street to it, that was then built in the water, was Sacramento street, on the south, and Battery street on the west.

And the said J. D. Stevenson, a witness for the defendants, further testified that he had known said one hundred vara lot since March, 1849; that Palmer, Cook & Co. were the first who took possession of the lot; that they took possession in the spring of 1850, by putting a pile at each corner; that witness was then piling in the one hundred vara lot south of it (which had also been granted by Leavenworth to said Parker, and which Parker and witness improved in 1850); that Palmer, Cook & Co. leased the first mentioned lot to Gordon, and Gordon erected buildings on it in the fall of 1850, or spring of 1851; that he drove piles, and made a street in front of the lot; that the lot was then covered with water, but is now filled in with earth, and that the improvements and buildings made and erected thereon were expensive, and have ever since been possessed and occupied by Palmer, Cook & Co., and their tenants. (The plaintiffs here admitted, before the Court and jury, as evidence in the cause, that the defendants, and those under whom they claim, have made valuable improvements on the premises, and have continued in possession from the commencement of the buildings thereon, known as the Gordon Block, in July, 1851, until the present time.)

And the defendants having read in evidence the before-recited entry in page 18 of the said book *F*, the plaintiffs offered to read in evidence the hereinafter recited entries therein, for the purpose of discrediting the defendants' evidence that said Leavenworth grant, before recited, was recorded at page 18 of said book, by showing that other entries were made in said book *F*, purporting to be entries of grants made by said Leavenworth in 1849, after he was out of office; or by showing other mistakes in recording grants in said book.

to the admission of each and every one of which entries as evidence the defendants objected, on the grounds that they were mere declarations of third persons, and irrelevant; and that, at all events, the original grants must be produced or accounted for; but the Court overruled said objections, and ruled, that, as the defendants had read in evidence the said entry at page 18 of said book *F*, the plaintiffs were entitled to read in evidence any other entries in said book *F*, without producing or accounting for the original grants there recorded; to which opinion and ruling of the Court the defendants, at the proper time, excepted. And the plaintiffs then read in evidence to the jury the said entries so objected to, as follows, to wit: at page 14 of said book one entry in the words and figures following, to wit:

"*Petition and Grant to J. H. Brown.*

TERRITORY OF CALIFORNIA,
District of San Francisco:

October the 3d, 1849.

Know all men by these presents, that John H. Brown has presented the foregoing petition for a grant of land in the north-west vicinity of San Francisco, as therein described. Therefore, I, the undersigned, Alcalde and Chief Magistrate of the District of San Francisco, in Upper California, do hereby give, grant, and convey unto the said John H. Brown, his heirs and assigns, forever, the lot of land as set forth in the petition, by a good and sufficient title, with legal and perpetual possession of the same in consonance with the established customs and regulations: being fifty varas square, and numbered on the plot 408, said ground lying and being situated in the north-west part of the town of San Francisco. In testimony whereof, I have hereunto set my hand as Alcalde and Chief Magistrate of the District aforesaid. Done at San Francisco the day and year above written.

T. M. LEAVENWORTH,
Alcalde Dist. San Francisco, Up. Cal.

Received for the above lot $12 50, being office fees.

T. M. LEAVENWORTH.

To Honorable T. M. Leavenworth, Alcalde and Chief Magistrate District of San Francisco.

Your petitioner, being a citizen of California, and a resident of the District of San Francisco, respectfully ask the grant of the lot of land containing fifty varas square, and numbered on the plot of the town of San Francisco four hundred and eight (408), the same being vacant and unoccupied. And your petitioner respectfully request that he may be put in possession of the same.

J. H. BROWN.

A true copy of the original petition and grant, received November the 28th, A. D. 1849, at 10½ o'clock A. M. of said day.

A. BOWMAN,
Recording Clerk."

At page 15 of said book, one entry in the words and figures following, to wit:

"*Original Grant to William S. Clark, Lot No.* 148, 50 *v. square.*

To T. M. Leavenworth, Alcalde and Chief Magistrate of San Francisco.

Your petitioner, the undersigned, a citizen of California, respectfully solicit the grant of a lot numbered one hundred and forty-eight (148), as marked on the plan or map of the town of San Francisco, now exhibited in your office, and fifty varas square.

WILLIAM S. CLARK.

San Francisco, Sept. 19th, 1848.

TERRITORY OF CALIFORNIA,
District of San Francisco:

September 19th, 1849.

Know all men by these presents, that William S. Clark has presented the foregoing petition for a grant of land in the town of San Francisco, as therein described: Therefore the undersigned, Alcalde and Chief Magistrate of the District of San Francisco, in Upper California, do hereby give, grant, and convey unto the said William S. Clark, his heirs and assigns, forever: The lot of ground as set forth in the petition, by a good and sufficient title, in consonance with the established customs and regulations, being fifty varas square, and numbered one hundred and forty-eight on the plan of the town. In testimony whereof, I hereunto set my hand, as Alcalde and Chief Magistrate of the District, as aforesaid. Done at San Francisco the day and year above written.

T. M. LEAVENWORTH,
Alcalde D. S. F.

Received for above lot $12 50, for town of San Francisco.

T. M. LEAVENWORTH.

True copy of the original, received November the 28th, A. D. 1849, at 10½ o'clock A. M. of said day.

A. BOWMAN,
Recording Clerk."

At page 19 of said book, one entry in the words and figures following, to wit:

"*Petition and Grant to William S. Clark.*

To Honorable T. M. Leavenworth, Alcalde and Chief Magistrate Dist. of San Francisco.

October 7th, 1848.

Your petitioner, being a citizen of California, and a resident of the District of San Francisco, respectfully ask the grant of the lot of land bounded on the north by Green street; east by Jones street; south by Vallejo street, and west by unsurveyed land, being one hundred by one hundred and fifty varas, the same being vacant and unoccupied, and your petitioner respectfully requests that he may be put in possession of the same.

WILLIAM S. CLARK.

TERRITORY OF CALIFORNIA,
District of San Francisco:

October 7th, A. D. 1849.

Know all men by these presents, that William S. Clark has presented the foregoing petition for a grant of land in the western vicinity of San Francisco, as therein described: Therefore, I, the undersigned, Alcalde and Chief Magistrate of the District of San Francisco, in Upper California, do hereby give, grant, and convey unto the said William S. Clark, his heirs and assigns, forever, the lot of land as set forth in the petition, by a good and sufficient title, with legal and perpetual possession of the same, in consonance with the established customs and regulations: bounded north by Green street; east by Jones street; south by Vallejo street, and west by unsurveyed land; said ground lying and being situated in the western vicinity of San Francisco. In testimony whereof, I have hereunto set my hand as Alcalde and Chief Magistrate of the District aforesaid.

Done at San Francisco the day and year above written.

T. M. LEAVENWORTH,
Alcalde and Chief Magistrate District San Francisco, Up. Cal.

Received for the above lot $37\frac{50}{100}$, exclusive of office fees.

T. M. LEAVENWORTH,
Alcalde, &c.

A true copy of the original petition and grant. Received November the 28th, A. D. 1849, at 10½ o'clock A. M.

A. BOWMAN,
Rec'g Cl'k.

At page 23 of said book, one entry in the words and figures following, to wit:

Petition and Grant to Alexander Perry.

To the Alcalde and Chief Magistrate of San Francisco.

Your petitioner, the undersigned, a citizen of the United States,

respectfully prays the grant of a title to a certain lot of ground lying and being situated in the western vicinity of San Francisco, containing fifty varas square, and numbered on the plan of the town seven hundred and thirty (730).

ALEXANDER PERRY.

TERRITORY OF CALIFORNIA,
District of San Francisco:

October 3d, 1849.

Know all men by these presents, that Alexander Perry has presented the foregoing petition for a grant of land in the vicinity of San Francisco, as therein described: Therefore, I, the undersigned, Alcalde and Chief Magistrate of San Francisco, Upper California, do hereby give, grant, and convey unto the said Alexander Perry, his heirs and assigns, forever, the lot of ground, as set forth in the petition, by a good and sufficient title, in consonance with the established customs and regulations: said lot lying and being situated in the western vicinity of San Francisco, containing fifty varas square, and numbered on the plan or map of the town, seven hundred and thirty (730). In testimony whereof, I have hereunto set my hand, as Alcalde and Chief Magistrate of the District aforesaid. Done at San Francisco the day and year above mentioned.

T. M. LEAVENWORTH.

Received for the above lot twelve dollars and $\frac{50}{100}$, ($12\frac{50}{100}$) for Municipal Fund.

T. M. LEAVENWORTH.

A true copy of the original petition and grant. Received November the 28th, A. D. 1849, at 10½ o'clock A. M.

A. BOWMAN,
Rec'g Cl'k."

And it was further proved that this suit was commenced on the 7th day of June, 1855.

And the defendants, for the purpose of proving that three months' previous notice was not given of the aforesaid sale of January 3d, 1850, read in evidence to the jury a resolution of the town council of San Francisco, passed on the evening of the 5th day of October, 1849, in the words and figures following, to wit:—

"On motion, it was further resolved, that the alcalde be requested to advertise, at the earliest possible moment, a public sale at auction of all unsold water lots."

And thereupon the defendants rested their case.

And the said witnesses, William C. Parker and William S. Clark, being recalled for the purpose of being cross-examined by the plaintiffs, in order to prove fraud in the issuing and confirmation of said

Leavenworth grant, the plaintiffs offered to prove such fraud by said Parker and Clark, to which the defendants objected, on the ground that if said grant was in fact made, and confirmed by the town council, and registered or recorded, as mentioned in the said act of March 26th, 1851, the said act operated as a grant and confirmation of said one hundred vara lot to the said Parker, his heirs and assigns, or to the persons holding under him, whether such grant by Leavenworth, and confirmation by the council, were fraudulent or not; and that it was not competent for the plaintiffs to impeach the same by proving such fraud; but the Court overruled said objection, and ruled that the said act intended to confirm only honest titles, and that it was competent for the plaintiffs to impeach the said Leavenworth grant and confirmation by the council, by showing fraud, as aforesaid; to which opinion and ruling of the Court the defendants, at the proper time, excepted. And the plaintiffs then, for the purpose aforesaid, cross-examined the said witness, Parker, who, on such cross-examination, testified, that on the said 25th day of September, 1848, witness presented to said Leavenworth two petitions at the same time, one for the one hundred vara lot in question, the other for the one hundred vara lot south of it, on Clay street; that he signed the petition in Leavenworth's office; that he cannot positively say whether both grants were delivered to him at the same time; that both grants were in possession of witness a long time; do not remember who first suggested to him the idea of getting the grants; has no distinct recollection of paying Leavenworth any money at the time; witness's impression is, that he paid Leavenworth $64 for the two grants; witness deeded back the one hundred vara lot in question, to Leavenworth the next day; do not recollect whether he made that deed in Leavenworth's office; is confident he did not make the deed back at the same time he received the grants; that witness retained the other lot, and he and Col. Stevenson improved and built on it; that witness sold the one hundred vara lot in question to Leavenworth; that witness was never on the lot till after he sold it; is positive that the re-conveyance was not made to Leavenworth the same day the grant was made to witness; witness is positive there was no arrangement or understanding between him and Leavenworth, as the consideration or motive of the grants by which witness was to re-convey one of the lots to Leavenworth; the people here did not regard lots of much value at the time, and when they could make a few dollars, they sold them; thinks the price of grants of fifty vara lots was $16, and of one hundred vara lots $32, which sum included office fees, or twenty-five dollars for a hundred vara lot, exclusive of office fees; Leavenworth must certainly have paid witness for his re-conveyance, for witness made him no present, and witness's impression has been and still is, that though his deed to Leavenworth recites only the consideration of twenty-five dollars, he nevertheless made one hundred dollars by the transaction; but witness has no definite recollection of receiving from Leavenworth any money at the time; witness was

then trading in lots, and buying and selling frequently; the town survey of such lots was then the O'Farrall survey; there was a sale at auction of water lots by Alcalde Hyde, in 1847; some of them sold as low as five dollars, and some as high as four hundred dollars, size of lots 45 ft. 10 in. by 137½ feet; that sale was under the Kearney grant; the two lots granted to me by Leavenworth were considered worth nothing at the time, and most people thought witness crazy to pay even the price he did for them; witness thinks he sometimes loaned Leavenworth money in small sums, but witness was often a borrower of Leavenworth, sometimes as high as two thousand dollars at a time; witness don't think these two grants were given him by Leavenworth in payment of a loan; witness never told Charles D. Carter so; he is very positive of this; Capt. Folsom wanted witness to get grants from Leavenworth to witness for the benefit of Folsom, about the same time, owing to a bad understanding between Leavenworth and Folsom. These lots were not then considered of any value here; there were not more than seven or eight hundred inhabitants here then; and there was no way of getting to the lots except in a boat; there was no dispute then about the power of alcaldes to grant water lots, and most people considered alcalde grants the best title; there was not so much legal ability here at that time, and people did not trouble themselves about the legality of grants; Leavenworth made several other grants of water lots about Clark's point.

And the said witness, William S. Clark, being likewise cross-examined by the plaintiffs, for the purpose aforesaid, testified, that the members of council present at the aforesaid meeting of the town council on the 11th of October, 1848, were the witness, E. P. Jones, Barton Mowry, and B. R. Buckelew, and the said alcalde, Leavenworth; that Leavenworth made a verbal statement to the council, when said resolution of confirmation (hereinbefore recited) was offered; that said resolution was written and offered by Buckelew; that the mode of transacting business in the council was by resolution; that said resolution was passed in the usual mode in which the council transacted business; that the council had no seal; and that the whole number of members of the council was six, besides the alcalde.

And George Gordon, sworn as a witness for plaintiffs, testified, that he made the first improvements on the lot sued for (fronting on Davis street) in the spring of 1852; that he commenced improving the one hundred vara block (of which the lot sued for is part) in June or July, 1851, by driving a pile foundation for the erection of buildings; that the lot was vacant when witness commenced improving, and had from nine to twelve feet water on it; that witness leased the lot from Palmer and Botts in June, 1851; thinks the lease was dated 15th July, 1851; but witness commenced improving before the date of the lease; that in July, 1851, witness received a written notice to desist, signed by Mr. Holladay, as attorney for the plaintiffs, Seabury and others, and took it to the office of Palmer, Cook & Co. (Here the plaintiffs produced and exhibited to the witness a written

notice to desist piling said lot, and of the claim of Seabury and others (grantees in the before recited deed from said Sprague), signed by the attorneys for the plaintiffs, and one Mr. Gay, as attorneys for said Seabury and others, dated July 9th, 1851; and the witness stated he thought the notice received by him was like the one produced; but that he could not state the contents of the notice received, as he did not read it carefully, not thinking it his business, but took it to the office of Palmer, Cook & Co. and left it there: Whereupon the defendants objected to the admissibility of proof of such notice, on the ground that there had been no notice to produce the notice so received by witness; and the Court sustained the objection, and ruled out the evidence as to such notice.) The witness further testified that he first improved the side of the said one hundred vara lot fronting on Front street; and that he had received other notices to desist from other parties, from Carter, and from Markwald, Caspari & Co.; but witness don't remember them distinctly.

And Barton Mowry, sworn as a witness for plaintiffs, testified, that he was here in 1847 and 1848; and was a member of the Town Council of San Francisco, and present at a meeting of the council on the 11th of October, 1848, when a resolution passed confirming grants made by Alcalde Leavenworth; that Leavenworth proposed the resolution, stating that he had granted a number of lots to defray expenses; that he did not state any number of lots, or lots in any particular part of the town. (The defendants here objected to the witness stating the reasons that induced him to vote for the resolution, and as to what lots were intended to be confirmed by the resolution, and where situated, and the Court sustained the objection.)

And the said Thomas Sprague, sworn as a witness for plaintiffs, testified that he purchased the lot sued for at the city sale of January 3d, 1850, for the price stated in said Geary grant, and made the payment stated in said grant and receipts; and that he conveyed the lot by the before recited deed of May 17, 1850; that witness heard no notice of any adverse claim at the sale, nor until several months after witness sold and conveyed as aforesaid; that he bid off three lots in said one hundred vara block, two of which he conveyed by the said deed, and the other he sold to some other person; that witness bid off lots in several other blocks at said sale.

The plaintiffs then asked witness whether three months' previous notice had been given of said sale; to which the defendants objected, unless the notice, or a copy of it, were produced or accounted for; and the Court sustained the objection.

And thereupon the plaintiffs, for the purpose of showing that the said resolution of confirmation before recited, was fraudulent, offered in evidence the hereinafter recited entries in several books of record, produced from said County Recorder's office, in order to prove by such entries that the members of the Council who voted for said resolution held divers grants which were confirmed thereby; to all which entries, and to each one of them separately, the defendants, at

the proper time objected, as well on the grounds that proof of such fraud was inadmissible as also on the ground that said entries were mere declarations of third persons, and were no evidence that any such grants were ever made (*nor* that the supposed grantees, mentioned in said entries, were the same persons who were members of said council); and also because the originals of said supposed grants were neither produced nor accounted for; but the Court overruled said objections, and permitted the plaintiffs to read said entries in evidence to the jury; to which opinion and ruling of the Court, the defendants at the proper time duly excepted; and the plaintiffs then read in evidence to the jury the said entries, as follows, to wit:—

At page 12 of said book "*B*" of District Records, one entry in the words and figures following, to wit:—

"This is to certify that a lot of land containing one hundred varas square, and consisting of Nos. three hundred and seventy-nine (379), three hundred and eighty (380), three hundred and eighty-one (381), and three hundred and eighty-two (382) in the north part of the town of San Francisco, was granted to William S. Clark, his heirs and assigns, forever, and legal, quiet, and perpetual possession given of the same, July 30th, A. D. 1848, in consonance with the authority and usages governing in such cases. Given under my hand the day and year above written.

Received for this lot $25, for use of Dist. Funds.

T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 222.]

At page 15 of said book "*B*" of District Records, one entry in the words and figures following, to wit:—

This is to certify that a lot of land containing one hundred varas square, lying in the northeast vicinity of San Francisco, was granted to William S. Clark, his heirs and assigns, forever, with quiet, legal, and perpetual possession of the same, the ninth day of September, A. D. 1848. Said lot is bounded and described as follows, by the extension of the following streets: on the north by Chesnut street, on the east by Battery street, on the south by Lombard street, and on the west by Sansome Street. Given under my hand at San Francisco.

Cost $25.

T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

At page 17 of said book "*B*" of District Records four entries in the words and figures following, to wit:—

"This is to certify that a lot of land containing one hundred by fifty varas, bounded and described by the extension of the following streets, viz: on the north by Filbert street, on the east by lot No.

420, on the south by lots 417 & 418, and on the west by Kearney street, said lot being in the northeastern vicinity of San Francisco, outside the town survey, was granted to William S. Clark, his heirs and assigns, forever, Sept. 4th, 1848, with legal and perpetual possession thereof.

Costs $12 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[1481, 1482.]

This is to certify that a lot of land containing one hundred by fifty varas, bounded and described by the extension of the following streets, viz: on the north by Francisco street, on the east by Sansom street, on the south by Chesnut street, and on the west by unsurveyed land, said lot being in the northeastern vicinity of San Francisco, was granted to William S. Clark, and legal, quiet, and perpetual possession given him of the same, Sept. 4th, 1848.

Cost $12 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

This is to certify that a lot of ground containing fifty varas square, and numbered on the plan or map of the town of San Francisco, six hundred and fifty-nine, was granted William S. Clark, and legal, quiet, and perpetual possession given him, his heirs and assigns, forever, the third day of October, A. D. 1848.

Cost $12 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 448.]

This is to certify that a lot of ground containing fifty varas square, and numbered on the plan or map of the town of San Francisco, six hundred and sixty-one (661), was granted to William S. Clark, and legal, quiet, and perpetual possession given him, his heirs and assigns, forever, the third day of October, A. D. 1848.

Costs $12 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 450.]

At page 18 of said book "*B*" of District Records, two entries in the words and figures following, to wit:—

This is to certify that a lot of land containing fifty varas square, and numbered one hundred and fifty-one (151), on the plan or map of the town of San Francisco, was granted to William S. Clark, and legal, quiet, and perpetual possession given him, his heirs and assigns,

of the same, the twenty-first day of September, A. D. 1848, at San Francisco.

Cost $12 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 87.]

This is to certify that a lot of land containing fifty varas square, and numbered one hundred and forty-eight (148) on the plan or map of the town of San Francisco, said lot lying and being situated in the town of San Francisco, was granted to William S. Clark, his heirs and assigns, forever, and legal, quiet, and perpetual possession given him of the same the nineteenth day of September, A. D. 1848, at San Francisco.

Costs $12 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 85.]

At page 25 of said Book of District Records, one entry in the words and figures following, to wit:

"This is to certify that a lot of land containing one hundred by one hundred and fifty Spanish varas, in the western vicinity of San Francisco, and bounded on the north by Vallejo street; on the east by Clark street; on the south by Broadway, and on the west by Jones street, was granted to William S. Clark, his heirs and assigns, forever, with legal and perpetual possession of the same, this 29th day of September, A. D. 1848, at San Francisco.

Costs $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

[Copied in book No. 3, Certified Grants, page 62.]

At page 30 of said Book "*B*" of District Records, one entry in the words and figures following, to wit:

"This is to certify, that a lot of land containing one hundred by one hundred and fifty Spanish varas, in the western vicinity of San Francisco, and bounded on the north by Pacific street; south by Jackson street; east by Clark street, and west by Jones street, was granted to William S. Clark, and legal and perpetual possession given him, his heirs and assigns, forever, at San Francisco, Sept. 29th, 1848.

Costs $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

At page 33 of said Book "*B*" of District Records, one entry in the words and figures following, to wit:

"This is to certify, that a lot of land containing one hundred by

one hundred and fifty varas, in the western vicinity of San Francisco, and bounded north by Green street; east by Jones street; south by Vallejo street, and west by unsurveyed land, was granted to William S. Clark, and legal and perpetual possession given him, his heirs and assigns, forever, October 7th, A. D. 1848, at San Francisco.

Cost $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

[884, 885, 872, 873, 867, 866. Copied in book No. 3, Certified Grants, on page 90.]

At page 34 of said Book "*B*" of District Records, one entry in the words and figures following, to wit:

"This is to certify, that a lot of ground, containing fifty varas square, and numbered on the map of the town of San Francisco one hundred and forty-nine (149), was granted to William S. Clark, and legal and perpetual possession given him, his heirs and assigns, forever, the 7th day of October, A. D. 1848, at San Francisco.

T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

[Copied in book No. 2, Certified Grants, page 86.]

At page 38 of said Book "*B*" of District Records, one entry in the words and figures following, to wit:

"This is to certify, that a lot of land, containing one hundred by one hundred and fifty varas, in the western vicinity of San Francisco, and bounded and described by the extension of the following streets, viz: On the north by Broadway, on the east by Clark street, on the south by Pacific street, and on the west by Jones street, was granted to William S. Clark, and legal and perpetual possession given him, his heirs and assigns, forever, October 3d, A. D. 1848, at San Francisco.

Cost $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

At page 39 of said Book "*B*" of District Records, one entry in the words and figures following, to wit:

"This to certify, that a lot of ground, containing one hundred by one hundred and fifty varas, in the western vicinity of San Francisco, bounded by the extension of the following streets, viz: On the north by Broadway, on the east by Jones street, on the south by Pacific street, and on the west by a street unsurveyed, was granted to William S. Clark, and legal and perpetual possession given him, his heirs and assigns, forever, October 3d, 1848, at San Francisco.

Cost $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

[860, 863, 888, 876, 889, 877. Copied in book No. 3, Certified Grants, page 87.]

At page 35 of said Book "*B*" of District Records, two entries in the words and figures following, to wit:

"This is to certify, that a lot of ground, containing one hundred varas square, in the town of San Francisco, and outside the limits of the town survey, and composed of fifty-vara lots, numbers 355, 360, 356, and 359, was granted to E. P. Jones, and legal and perpetual possession given him, his heirs and assigns, forever, Oct. 7th, A. D. 1848, at San Francisco.

Cost $25. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 207.]

This is to certify, that a lot of ground, containing one hundred varas square, in the western vicinity of San Francisco, and composed of numbers six hundred and twenty-nine, six hundred and thirty, six hundred and fifty-one, and six hundred and fifty-two, 629, 630, 651, and 652, was granted to E. P. Jones, and legal and perpetual possession given him, his heirs and assigns, forever, Oct. 7th, 1848, at San Francisco.

Cost 25. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

[Copied in book No. 2, Certified Grants, on page 423.]

At page 36 of said Book "*B*" of District Records, four entries in the words and figures following, to wit:

"This is to certify, that a lot of ground, containing one hundred varas square, in the town of San Francisco, and outside of and adjoining the limits of the town survey, and composed of numbers of fifty-vara lots, numbered 305, 306, 309, and 310, was granted to E. P. Jones, and legal and perpetual possession given him, his heirs and assigns, forever, Oct. 7th, 1848, at San Francisco.

Cost $25. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco.

[Copied in book No. 2, Certified Grants, page 167.]

"This is to certify, that a lot of ground, containing one hundred varas square, lying and being situated in the town of San Francisco, and outside of and adjoining the limits of the town survey, and composed of fifty-vara lots, numbers 303, 304, 311, and 312, was granted to E. P. Jones Oct. 7th, A. D. 1848, and legal and perpetual possession given him, his heirs and assigns, forever, at San Francisco.

Cost $25.

[Copied in book No. 2, Certified Grants, page 166.]

This is to certify, that a lot of land, containing one hundred varas square, lying and being situated in the town of San Francisco, outside of and adjoining the limits of the town survey, and composed of fifty-vara lots, numbers 349, 350, 354, and 353, was granted to E. P. Jones, and legal and perpetual possession given him, his heirs and assigns, forever, October 7th, A. D. 1848, at San Francisco.

Cost 25.

[Copied in book No. 2, Certified Grants, page 199.]

This is to certify, that a lot of ground, containing one hundred varas square, lying and being situated immediately west of lots number 651 and 652, and divided from them by a street, in the western vicinity of San Francisco, was granted to E. P. Jones, and legal and perpetual possession given him, his heirs and assigns, forever, Oct. 7th, 1848, at San Francisco.

Cost $25. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

At page 13 of said Book "*B*" of District Records, two entries in the words and figures following, to wit:

"This is to certify, that a lot of land, one hundred by one hundred and fifty varas, lying in the northern vicinity of San Francisco, was granted to B. R. Buckelew, his heirs and assigns, forever, with legal and perpetual possession, on the eighth day of August, A. D. 1848, said lot being bounded on the north by Bay street; on the east by Dupont street; on the south by Francisco street, and on the west by Stockton street. Given under my hand the day and year above written.

Cost $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

"This is to certify, that a lot of land, one hundred by one hundred and fifty varas, lying in the northern vicinity of San Francisco, was granted to B. R. Buckelew, his heirs and assigns, forever, on the eighth day of August, A. D. 1848, and legal and perpetual possession given him, said lot being bounded on the north by Bay street; on the east by Stockton street; on the south by Francisco street, and on the west by Powell street. Given under my hand the day and year above written.

Cost $37 50. T. M. LEAVENWORTH,
Alcalde Dist. San Francisco."

At page 24 of the hereinbefore mentioned book "*F*" of Land Titles, an entry in the words and figures following, to wit:

"*Petition and Grant to B. R. Buckelew.*

To T. M. Leavenworth, 2d Alcalde and acting Chief Magistrate of the District of San Francisco.

Your petitioner, the undersigned, a citizen of California, respectfully solicits the grant of a title to a certain lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, and bounded by the continuation of the streets mentioned as follows: North by Greenwich street; east by Sansome street; south by Filbert street, and west by unsurveyed lands. The petitioner would urge the issue of a title at your earliest convenience.

San Francisco, March 22d, A. D. 1848.

B. R. BUCKELEW.

TERRITORY OF CALIFORNIA,
District of San Francisco:

Know all men by these presents, that Benjamin R. Buckelew has presented a petition for *for* a grant of land in the vicinity of the town of San Francisco, as therein described: Therefore I, the undersigned, Alcalde and acting Magistrate of the town of San Francisco, Upper California, do hereby give, grant, and convey unto the said B. R. Buckelew, his heirs and assigns, forever, the lot of ground as set forth in the foregoing petition, by a good and sufficient title, in consonance with the established customs and regulations, being one hundred varas square; said ground lying and being situated outside the limits of the town survey. In testimony whereof, I have hereunto set my hand as 2d Alcalde and acting Chief Magistrate of the District aforesaid, this twenty-third day of March, A. D. 1848.

T. M. LEAVENWORTH.

Received of B. R. Buckelew, for this grant, twenty-five dollars for the District fund.

T. M. LEAVENWORTH.

A true copy of the original "Petition and Grant." Received November the 28th, A. D. 1849, at 10½ o'c. A. M.

A. BOWMAN,
Rec'g Cl'k.

At page 90 of a book called Book "*A*" of Original Grants (now produced by the plaintiffs from said County Recorder's office), two entries in the handwriting of said Leavenworth, in the words and figures following, to wit:

"Whereas Benj. R. Buckelew has presented a petition soliciting for a title to a lot of land in the vicinity of the town of San Francisco, as described in said petition: Therefore, I, the undersigned Alcalde, do hereby grant and convey unto the said B. R. Buckelew

a lot of land containing one hundred varas square, and bounded by the extension of streets named as follows: North by Greenwich street; east by Sansome street; south by Filbert street, and west by unsurveyed lands.

San Francisco, 23d day of March, A. D. 1848.

T. M. LEAVENWORTH,
Second Alcalde and Chief Magistrate Dist. S. F.

Whereas Benj. R. Buckelew has presented a petition soliciting the grant of a title to a lot of land, as therein described, in the vicinity of the town of San Francisco: Therefore, I, the undersigned Alcalde, do hereby grant and convey unto the said Benj. R. Buckelew, his heirs and assigns, forever, a lot of land containing one hundred varas square, bounded by the extension of the streets extended and mentioned as follows: North by Lombard street; east by Battery street; south by Greenwich street, and west by Sansome street.

San Francisco, 23d day of March, A. D. 1848.

T. M. LEAVENWORTH,
Second Alcalde and Chief Magistrate Dist. S. Francisco."

At page 94 of said book "*A*" of Original Grants, three entries in the handwriting of said Leavenworth in the words and figures following, to wit:—

"Whereas Benj. R. Buckelew has presented a petition soliciting for the grant of a title to a lot of land as therein described: Therefore, I, the undersigned Alcalde, do hereby grant and convey unto the said Benj. R. Buckelew, his heirs and assigns, forever, a lot of land containing one hundred varas square, in the vicinity of the town of San Francisco, and bounded by the extension of streets named as follows: south by Green street, west by Battery street, north by Union street, and east by a rectangular line to the point of beginning.

San Francisco, March 25th, A. D. 1848.

T. M. LEAVENWORTH,
2d Alcalde & acting Chief Magistrate.

Whereas Benj. R. Buckelew has presented a petition, soliciting for the grant of title to a lot of land as therein described: Therefore, I, the undersigned Alcalde, do hereby grant and convey unto the said Benj. R. Buckelew, his heirs and assigns, forever, a lot of land containing one hundred and fifty varas by one hundred varas, in the vicinity of the town of San Francisco, and bounded by the extension of streets named as follows: north by Union street, east by Sansome street, south by Green street, and west by Montgomery street.

San Francisco, March 25th, A. D. 1848.

T. M. LEAVENWORTH,
2d Alcalde & acting Chief Magistrate.

Whereas Benjamin R. Buckelew has presented a petition soliciting for the grant of a title to a lot of land as therein described: Therefore I, the undersigned Alcalde, do hereby grant and convey unto the said Benj. R. Buckelew, his heirs and assigns, forever, a lot of land containing one hundred varas front by fifty varas deep, in the vicinity of the town of San Francisco, and bounded as follows: north by the continuation of Lombard street, east by the continuation of Sansome street, south by the continuation of Greenwich street, and west by a lot of one hundred varas granted to Geo. Hyde.

San Francisco, 27th day of March, A. D. 1848.

T. M. LEAVENWORTH,
2d Alcalde & acting Chief Magistrate."

At page 60 of a book called book "*B*" of Original Grants (now produced by the plaintiffs from said county Recorder's office, and this as well as said book "*A*" being different books from those produced by the defendants as hereinbefore stated), an entry in the handwriting of said Leavenworth, in the words and figures following, to wit:—

"Whereas Benj. R. Buckelew has presented a petition soliciting for the grant of a title to a lot of land as therein described: Therefore, in virtue of the powers of my office, I, the undersigned Alcalde, do hereby grant and convey unto the said Benj. R. Buckelew, his heirs and assigns, forever, a lot of land containing one hundred and fifty varas by one hundred, situated in the vicinity of the town of San Francisco, and bounded by the extension of the streets mentioned as follows: north by Chesnut street, east by Montgomery street, south by Lombard street, and west by Kearney street. Given under my hand this 26th day of June, A. D. 1848.

T. M. LEAVENWORTH,
2d Alcalde & acting Chief Magistrate D. S. F."

At page 61 of said book "*B*" of Original Grants, two entries in the handwriting of said Leavenworth, in the words and figures following, to wit:—

Whereas, Benj. R. Buckelew has presented a petition soliciting for the grant of a title to a lot of land as therein described: Therefore, I, the undersigned Alcalde, do hereby grant and convey unto the said B. R. Buckelew, his heirs and assigns, forever, a lot of land situated in the vicinity of the town of San Francisco, containing one hundred and fifty by one hundred varas, and bounded by the extension of the streets mentioned as follows: north by Francisco street, east by Montgomery, south by Chesnut street, and west by Kearney street. Given under my hand this twenty-sixth day of June, A. D. 1848.

T. M. LEAVENWORTH,
2d Alcalde & Chief Magistrate acting Dist. San Francisco.

Whereas, Benj. R. Buckelew has presented a petition soliciting for the grant of a title to a lot of land as therein described: Therefore, I, the undersigned Alcalde, do hereby grant and convey unto the said Benj. R. Buckelew, his heirs and assigns, forever, a lot of land containing one hundred and fifty varas by one hundred varas, situated in the vicinity of the town of San Francisco, and bounded by the extension of the streets mentioned as follows: north by Bay street, east by Kearney street, south by Francisco street, and west by Stockton street. Given under my hand this twenty-sixth day of June, A. D. 1848.

T. M. LEAVENWORTH,
2d Alcalde & Chief Magistrate Dist. S. F., acting."

And thereupon the plaintiffs having proved the loss of the records of the proceedings of the town council for the year 1847, produced a newspaper, published in San Francisco on the 30th of October, 1847, containing what purported to be the hereinafter recited copy of a resolution of the town council, of the date of October 28th, 1847, and Robert A. Parker, sworn as a witness for plaintiffs, testified that he was a member of said council during the month of October, 1847, and that he was then present at a meeting of said council when a resolution was passed by the council, of similar purport to the said resolution printed in said newspaper (which was exhibited to the witness); that witness read said resolution at the time of its passage; but had not seen or thought of it from that time until yesterday, and he cannot state that the resolution in said newspaper is a literal copy of the resolution of the council; nor can he remember the precise words of the resolution as it passed the council; but witness thinks it was to the same purport or effect as the resolution in said newspaper; and the plaintiffs, without any further proof that said newspaper contained a true copy of said resolution, offered said resolution, as printed in said newspaper, in evidence, for the purpose of showing that the words "lots of land" used in the before recited resolution of confirmation, did not include water lots; to which evidence the defendants objected on the grounds that it was not sufficiently proved that said newspaper contained a true copy of said resolution, and that if said resolution were sufficiently proved, it was inadmissible in evidence for the purpose aforesaid, or for any other purpose; but the Court overruled said objections, and permitted the plaintiffs to read in evidence to the jury the said printed copy of the said resolution, to which opinion and ruling of the Court the defendants at the proper time duly excepted; and the plaintiffs then read in evidence to the jury from the said newspaper the said copy of said resolution in the words and figures following, to wit:—

"Be it resolved by the Town Council of San Francisco, That all the unsold lots now belonging to the town of San Francisco, both on

land and in the water, shall hereafter only be disposed of by public auction.

Special meeting of Council, Oct. 28th, 1847.

W. A. LEIDERDORFF,
E. P. JONES,
ROBERT A. PARKER,
W. S. CLARK."

And thereupon the plaintiffs produced from the office of the City Surveyor, the original map of the city survey made by Jasper O'Farrall, in 1847, and proved that the same was the official map of the beach and water lot survey of the town of San Francisco that year, and offered the same in evidence for the purpose of showing that no streets were delineated on said map outside of the lots fronting on Battery street, and for the purpose of showing that said one hundred vara lot, as described in said Leavenworth grant, could not be found or identified by said map; to which evidence the defendants objected; but the Court overruled said objection, and permitted said map to be given in evidence to the jury; to which opinion and ruling of the Court the defendants at the proper time duly excepted; and the plaintiffs then gave in evidence the said map, a traced copy whereof is annexed to this bill of exceptions as part thereof.

And Samuel Brannan, sworn as a witness for the plaintiffs, testified that at the sale of January 3d, 1850, witness purchased two of the lots in said one hundred vara block (other than the lot sued for), to which evidence the defendants at the proper time objected, on the grounds that it was irrelevant, and that parol evidence of such purchase was inadmissible without producing or accounting for the original grants to the witness; but the Court overruled said objection and permitted said evidence to go to the jury; to which opinion and ruling of the Court the defendants at the proper time duly excepted, and said evidence went to the jury.

The witness on cross-examination stated that he disposed of the lots so purchased by him, two or three years ago, and had never improved them.

Edward Bosqui, sworn as a witness for plaintiffs, testified that he is in the employ of Palmer, Cook & Co., and has been for several years past; that said firm is composed of Joseph C. Palmer, Charles W. Cook, George W. Wright, and Edward Jones; that witness collects the rents of the premises sued for, from the defendants, as the tenants of Edward Field, for the use of said Edward Field; that when collected witness takes the rents to the bank of Palmer, Cook & Co., and deposits them there to the credit of Edward Field; that witness knows nothing about any written notice of the plaintiffs till having been sent by the witness Gordon to the office of Palmer, Cook & Co.

And thereupon the testimony in the cause closed, the foregoing being all the evidence given on the trial of said cause.

And the Court thereupon instructed the jury as follows, to wit:

"The parties claim the premises in dispute adversely to each other, under an act of the Legislature of our State, known as the "Water Lot Bill." By that act two classes of grantees are designated to take a leasehold in certain property, in which is comprehended the lot in dispute. To place themselves within one class, the plaintiffs produce a grant issued by John W. Geary, Alcalde of San Francisco, in accordance with the proclamation of Governor Kearney. To effect a similar object, defendants exhibit a grant of Leavenworth, Alcalde of San Francisco, confirmed by the ayuntamiento thereof, and registered in a book of Records at that time under the control of the Recorder of the county of San Francisco, prior to 3d April, 1850. Having produced these papers as identifying respectively as legislative grantees, how stand the documentary titles of the parties?

The Court instructs you that neither party derives any title from the alcalde grant exhibited to the Court. Neither of the alcaldes had any power to grant the property, and no estate passed by either of their grants. These documents are only to be considered as "ear marks" to designate the legislative grantees who are intended to take. Both bringing themselves within the classes designated, the defendants, being in possession, as ascertained by the evidence, upon principles of law would be entitled to a verdict.

But plaintiffs contend that there is fraud in the "ear marks" presented by defendants; that the legislature did not intend to benefit persons who came into dishonest possession of them. And the Court charges you that the legislature did not intend to do so.

But the enquiry remains, are these defendants so to be considered? In presenting this enquiry, the jury, in making up their minds as to fraud in the grant, are to dismiss from their consideration

1. The fact relied on by the counsel for plaintiffs, that the boundaries called for in the grant did not exist on the face of the land granted.

2. That the amount of consideration for which the grant was made was inadequate.

3. The fact of there not being a public sale of the lot granted by Leavenworth.

4. That possession was not given of lot at the time of the execution of the grant.

No one of these facts, nor any arguments of counsel drawn from them calculated to impress your minds with the idea of fraud, as to the issuing of the grant, can or ought to influence the conclusion at which you may arrive on this point. When this Court ruled as it has, that facts tending to show fraud in the Leavenworth grant

might be given in evidence, it was not with a view to evade the legislation of this State.

This Court is as much bound as any other judicial tribunal in this State to carry out her behests as expressed by her legislative acts. The obligation to do this is limited only by the Constitution of the U. S. and the laws of Congress passed in pursuance thereof.

The act of March 26th, 1851, comes in conflict with neither, and it is therefore the duty of this Court to instruct you that the legislative grant in this case is to be enforced according to its spirit and letter.

Now, that act has declared that the purchaser or grantee from any alcalde of the city of San Francisco, whose purchase or grant has been confirmed and registered, or recorded in the manner therein described, shall be confirmed, &c. That act places such purchasers or grantees on equal footing with purchasers at public sales, no matter what the amount of consideration paid. The Legislature of our State having placed them upon an equal footing, neither you nor the Court can view them in a different light.

Thus regarding them in all respects equal, so far as these facts are concerned, turn your attention to the enquiry, whether there be fraud in this case, and if such be proved, what is its extent? The Court has been requested to instruct you as to the character of the testimony required to establish fraud, and to say to you, "that fraud cannot be presumed. The party alleging fraud must prove it by clear and satisfactory evidence." Upon this point I charge you that such is the general rule, with this addition—that such evidence is sufficient if satisfactorily ascertained by circumstances, and that in the consideration of those circumstances, when a good or bad motive may be assigned with equal reason, the presumption is always against fraud.

With the nature of the testimony necessary to establish fraud impressed on your minds, your first duty will be to enquire, 1st. Whether fraud has been proved in the grant of Leavenworth? or, 2d. In the confirmation of it?

1st. As to the grant. The evidence relied on by plaintiffs to prove fraud, is the issuance by Leavenworth, as alcalde, of a grant on one day to W. C. Parker, and the reconveyance by Parker on the following day, of the land granted, to Leavenworth. This fact, it is urged, is no evidence of fraud, because the city of San Francisco had at the time no interest in the land, and therefore could not be defrauded.

The Court charges you, that as between the parties such transaction was *prima facie* evidence of a fraud upon laws existing at the time, and upon the rights of the then owners, whoever they may have been. This is the only evidence in the case as to fraud in the grant.

The inference you are called upon to draw, is, that there was no collusion between the alcalde and Parker to do indirectly, *per personam interpositam*, what the alcalde could not do directly—purchase from himself—which would be a fraud upon the law.

To rebut the inference contended for, you have the testimony of

Parker, who swears that there was no collusion or understanding between Leavenworth and himself; that he paid $64 for this and another grant, taken out at the same time; that he does not recollect his being paid by Leavenworth, when he reconveyed to him, the consideration; he presumed he was paid, as he was not in the habit of making presents to Leavenworth, and concludes by saying that his impression is, that he made $100 out of the transaction. This is all the testimony in the cause as to fraud in the grant, and to you I leave it.

2d. The second attack by the plaintiffs, is upon the confirmation of the grant by the ayuntamiento.

This has been assailed on two grounds: 1st. It was fraudulent. 2d. It does not refer to this specific grant.

These objections cannot both avail; for if this confirmation does not refer to, and include this grant, then there could be no fraud in the confirmation in connection with the grant. It is only on the supposition that the grant was fraudulently covered and sanctioned by it, that its fraudulent character *quoad* this grant is to be ascertained.

Now, as to proof of fraud in the confirmation, on the supposition that it does refer to this grant, plaintiffs have given in evidence the fact that various grants had been made by Leavenworth to the members of the ayuntamiento which, with the particular grant under consideration, were included in the confirmation, and the plaintiffs ask you to infer, that such confirmation being fraudulent as to the grants held by the members of the ayuntamiento, was fraudulent also as to the specific grant under consideration. The fact and the inference you are asked to draw from it are left to your consideration.

The above is all the testimony in the cause tending to establish fraud, and it is the only testimony you can take into consideration in arriving at a conclusion on this point. If, in view of it, you come to the conclusion there was no fraud, there is an end of plaintiffs' case, so far as this question is concerned.

The next attack upon the claim of the defendants to be considered as grantees of the legislature, is predicated on the ground that the grant made by Leavenworth was not recorded as required by the statute. Upon this point the Court instructs you, that an entry made as exhibited in Book "*B*," page 31 of the District Records, is a registry within the meaning of the act.

The Court also directs you to the testimony given as to the recording of the deed in book "*F*." The facts developed are, that the deed bears date in 1848, and the record of it in 1849. It is urged by plaintiffs that this fact shows a want of identity between the two. To explain this variance in dates, defendants have produced the recording clerk, who swears he recorded the grant of 1848 in that year, and that he committed a clerical error in the date. He has no recollection of such error, further than from seeing his certificate at the time of recording.

To rebut this testimony, the plaintiffs have referred to the records of several of the grants recorded in the same book, bearing the date of 1849, and ask that you infer from this fact that the one recorded by the clerk, and under consideration, actually bore date in 1849. On the other hand, defendants ask that as all the grants which were recorded as of that date, were, as appears by the certificates, received at one and the same time for record, such fact should rather induce you to infer the naturalness of the error into which the recording clerk fell.

In addition to the clerk, Col. Stevenson was called as a witness. He identified the original grant; stated it was in his possession from March, 1849, until spring of 1850, with the exception of the time it was in the Alcalde Geary's office for record. He stated that he took this grant, with another for his own land, to the Alcalde's office for record at the time of its date; got a receipt for it; returned subsequently; gave back the receipt and received the grant with the certificate of record upon it.

This is the testimony as to the record of the grant; and should you believe that the variance in date between the original and the record grant is a clerical error, then the recording of the instrument as required by the statute is established.

The last assault made by plaintiffs is, that the confirmation by the ayuntamiento does not refer to the grant of Leavenworth, but only to the lots of *land* and not *water* lots, of which the premises in dispute is one.

On this point, the Court instructs you that the terms of the confirmation does include the lot in dispute, and unless the evidence in the cause satisfies you it was excepted, you are to consider it as included in the confirmation.

The remaining point to be considered, is the effect which the fraud in this case (should you find that such exists) will have upon the defendants' rights, and the Court proceeds to instruct you thereon. In the argument addressed to the Court to induce it to withhold all evidence of fraud from the jury in this case, reference was made to the condition of affairs in this city, and the position of what is known as the water lot property, at the time the act of the Legislature of 26th March, 1851, was passed.

It was urged that large investments had been made by the citizens of the place to render it valuable to individuals, and make it subservient to the growth and general prosperity of the city. That this was done in good faith, in ignorance of the ownership of the property. That in view of such a condition of things, the State, when she became the owner, through her Legislature passed the act under consideration.

That its object was repose and the quieting of titles, and thus viewed, it was to be considered a remedial statute, and as such must be liberally construed. Hence it was argued that its terms should be so interpreted as to include all purchasers or grantees, honest or

dishonest. While the Court admitted the correctness of these views, it could not perceive the applicability of them to the point then under consideration.

Viewed in another aspect, and in connection with the question immediately before it, they commend themselves strongly to the Court. In view of the fact that a portion of the property had been sold at public auction, the purchase money for which had been paid and had gone into the treasury of the city, and sold under circumstances of publicity which invited competition and enhanced prices, and of the fact that other portions had been sold by alcaldes for almost nominal considerations, unattended by any circumstances which would tend to appreciate prices, our Legislature have considered that general interests demanded that all such sales should be placed on the same footing.

They have deemed the quieting of titles a paramount consideration, and although this Court was not prepared so to construe the terms of the act as to include all purchasers or grantees, honest or dishonest, it considers and so charges you, that the correct interpretation of the statute includes all honest purchasers or grantees. In this class are to be included all who became purchasers or grantees without participation in any fraud which might distinguish their case from that of others. The act makes a present grant to all such.

Statutes of limitations are now viewed by Courts as statutes of repose, and are so construed in the application of them to cases as they arise.

In Gregg *vs.* Lessee of Sayre and wife, the Supreme Court of the United States have decided that a void grant will give color of title so as to enable a *bona fide* purchaser to hold under the statute of limitations.

Now if the act of our Legislature of 26th March, 1851, was intended (and the Court so considers) to be a statute of repose, having for its object the quieting of titles, the reasons on which the decision in the foregoing case rests, is applicable to the case at bar.

And the Court instructs you, if you find that Wright and Botts, under whom defendants claim, were not participants in or had any knowledge of the original fraud (should you find there had been any), then in such case the rights of the defendants cannot be injuriously affected by the original fraud of Leavenworth and Parker. Their possession of the land would be honest and therefore is protected by the statute.

As to the facts in this case, tending to prove fraud in the confirmation of the grant, no attempt has been made to fix notice on Wright and Botts, and the character of the fact precludes the idea of affixing constructive notice on them were it allowable to do so in this case. There was nothing on the face of their title deeds which made it their duty to investigate the transactions between Leavenworth and the members of the Ayuntamiento. The remaining fact relied on to

establish fraud is the conveyance by Leavenworth, as Alcalde, to Parker, and the reconveyance back by Parker to Leavenworth.

There is no evidence to establish any actual notice to Wright and Botts of this transaction, and there is no reference to it in their title deeds; and in view of what the Court deems a fair interpretation of the act of the Legislature, and of the fact that the document executed by Leavenworth, was treated and considered as a grant, the Court instructs you, that the law would not enforce the strict doctrine of constructive notice in this case. To conclude on this point of fraud. It is your duty, first, to satisfy yourselves from the evidence that there was fraud in the original grant; and secondly, that the defendants and those under whom they claim under them, were privy to it, before they can be excluded from the class of grantees designated by the Act of March 26, 1851.

I conclude by laying before you the instructions prayed for by the respective counsel, with such modifications it has been deemed proper to make."

And the defendants at the proper time, duly objected and excepted to the following portions of said charge of the Court, to wit:—

1st. "But plaintiffs contend that there is fraud in the 'ear marks' presented by defendants, that the Legislature did not intend to benefit persons who came into dishonest possession of them, and the Court charges you that the Legislature did not intend to do so. But the enquiry remains, are these defendants so to be considered?"

2d. "Thus regarding them equal in all respects so far as those facts are concerned, turn your attention to the enquiry, whether these be found in this case, and if such be proved, what is its effect?"

3d. "With the nature of the testimony necessary to establish fraud impressed on your minds, your first duty will be to enquire, 1st, whether fraud has been proved in the grant of Leavenworth? or 2d, in the confirmation of it?"

1st. "As to the grant, the evidence relied on by plaintiffs to prove fraud, is the issuance by Leavenworth as Alcalde, of a grant on one day to W. C. Parker, and the reconveyance by Parker on the following day of the land granted, to Leavenworth. This fact it is urged is no evidence of fraud, because the city of San Francisco had at the time no interest in the land, and therefore could not be defrauded. The Court charges you that as between the parties such transaction was *prima facie* evidence of a fraud upon laws existing at the time, and upon the rights of the then owners, whoever they may have been."

4th. "This is all the testimony of fraud in the cause and to you I leave it."

5th. "Now as to proof of fraud in the confirmation, on the supposition that it does refer to this grant, plaintiffs have given in evidence the fact that various grants had been made by Leavenworth to the members of the Ayuntamiento, which, with the particular grant under consideration, were included in the confirmation, and the

plaintiffs ask you to infer, that such confirmation being fraudulent as to the grants held by the members of the Ayuntamiento, was fraudulent also as to the specific grant under consideration. The fact and the inference you are asked to draw from it are left to your consideration."

6th. "On this point the Court instructs you, that the terms of the confirmation does include the lot in dispute, and unless the evidence in the cause satisfies you it was excepted, you are to consider it as included in the confirmation."

7th "To conclude on this point of fraud, it is your duty, first, to satisfy yourselves from the evidence that there was fraud in the original grant; and secondly, that the defendants and those under whom they claim, were privy to it, before they can be excluded from the class of grantees designated by the Act of 26th March, 1851."

And upon the prayer of the plaintiffs, the Court gave the jury the following further instructions, to wit:—

1st. "That if the members of the council who voted on the resolution of October 11th, 1848, to confirm Alcalde grants, did so in collusion with the Alcalde, chiefly for their own benefit and in fraud of the town or then existing laws, then such vote of confirmation is fraudulent, and so far as the immediate parties in such fraudulent transaction and all persons participating in, or having actual notice of the same, is not a confirmation within the meaning of the Act of March 26, 1851."

2d. "That if the resolution of Oct. 11th, 1848, was predicated upon the suggestion of the Alcalde made to the council, that he had made grants of a *few* lots, but not *many*, and that such suggestions of the Alcalde were false, that in fact he had made very numerous grants, the existence of which he suppressed, then the resolution is not a confirmation within the meaning of the Act, so as to operate as such in favor of a purchaser or grantee having actual notice of said statements and their falsehood."

3d. "That if the grant which includes this lot in question from Leavenworth to Parker, was made merely for the benefit of Leavenworth himself, and that Parker's name was used to assist Leavenworth to make a grant indirectly to himself, which he could not do directly, then such grant was *prima facie* void for fraud, and is therefore insufficient as the basis of a title, under the Act of March 26th, 1851, in the hands of any grantee or purchaser having actual notice of the transaction."

4th. "The Act of the Legislature never meant to sanction a fraud, and to a party claiming under a fraudulent grant of the character of which they were cognizant at the time of their becoming purchasers, the statute grants nothing; but to parties who, at the date of the Act of March 26th, 1851, were purchasers in good faith, without actual notice of any fraud, the statute grants the land claimed by them."

5th. "That unless the defendants show that the grant from Lea-

venworth to Parker, dated the 25th dayof September, 1848, was on or before the 3d of April, 1850, registered or recorded correctly, and without material error in same book of record, which was on the 26th of March, 1851, in the custody or control of the Recorder of the county of San Francisco, the defendants have proved no title, and a grant made and dated September 25th, 1848, which appears on the records as a grant made and dated September 25th, 1849, is not recorded within the meaning of the statute, unless the jury believe from the testimony that the variance in date is a clerical error, in which event such variance will not affect the rights of defendants."

6th. "That unless the grant under which the defendants claim was made by an Alcalde of the *City* of San Francisco, it is no evidence of title in the defendants. That the grant under which the defendants claim being signed by the Alcalde of the *District* of San Francisco, comes not within the terms of the Act, unless the jury find from the testimony in the cause, that the grant in question was made by an Alcalde of the city of San Francisco."

7th. "That the resolution of 11th October, 1848, includes in its general terms the grant issued by Leavenworth on the 25th September, 1848, unless the testimony in the cause satisfies you this grant was intended to be excepted from the general terms of confirmation, when you will find for the plaintiffs."

8th. "It was not necessary to sustain this action that the plaintiffs (in law) give defendants any notice of an adverse claim, but that the same being duly recorded was a sufficient notice to all adverse parties."

To each and all of which said instructions the defendants, at the proper time, objected, but the Court overruled said objections, and gave said instructions to the jury; to which opinion and ruling of the Court, and to the giving of said instructions, the defendants duly excepted.

And the defendants, at the proper time, prayed the Court in writing to give the jury the following instructions, to wit:—

1st. "The deed from Gushee to the plaintiff Ward M. Parker, dated April 20th, 1855 (given in evidence by the plaintiffs), is null and void, and could convey no right, as against the defendants, if Gushee never had possession of the premises, and the defendants were in possession adversely to the grantor at the date of the deed."

2d. "To bring the Geary grant within the operation of the Act of March 26th, 1851, the plaintiffs must show, affirmatively, that the alleged sale was in pursuance of the terms of the Kearney grant; and that three months' previous notice of such was given; and the recitals in the grant are not proof that such notice was given; and without proof of such notice the plaintiffs cannot recover."

But the Court refused to give said instructions, or either of them, and in lieu of said second instruction gave the jury the following, to wit:—

"To bring the Geary grant within the operation of the Act of March 26th, 1851, the plaintiffs must show affirmatively, that the

alleged sale was in pursuance of the terms of the Kearney Grant; and that three months' previous notice of such sale was given, and the recitals in the grant are *prima facie* evidence that such notice was given:" to which opinion and refusal and to the giving of which substituted instruction the defendants duly objected and excepted.

The defendants also prayed the Court to give the jury the following instruction, to wit:—

"At all events, if it appears in evidence, to the satisfaction of the jury, that three months' previous notice of the alleged sale on the 3d of January, 1850, was not given, the plaintiffs cannot recover."

Which instruction the Court gave; but with the following addition or qualification, to wit: "That lunar months, and not calendar months, were intended by the proviso in the Kearney Grant; and that three lunar months' notice would be a compliance with the terms of said Kearney Grant in that respect:" to which addition or qualification the defendants at the proper time objected; but the Court overruled said objection, and gave to the jury, by way of instruction, said addition or qualification; to which opinion and ruling of the Court, the defendants duly excepted.

And the defendants also, at the proper time, prayed the Court to give the jury the following instruction, to wit: "If the grant by Geary to Sprague was neither registered nor recorded, on or before the 3d day of April, 1850, in some book of record in the office, custody or control of the Recorder of the county of San Francisco, at the date of the passage of the Act of March 26th, 1851, the said grant is not within the intent and operation of said Act;" which instruction the Court refused to give to the jury; and the defendants duly excepted to the said opinion and refusal.

And the defendants also prayed the Court to give the jury the following instruction, to wit: "At the dates of the Leavenworth grant and confirmation by the town council, given in evidence by the defendants, neither the town or city, nor the plaintiffs, or those under whom they claim, had any right or title whatever to the one hundred vara lot mentioned in said grant; and therefore they could not be defrauded, as to said one hundred vara lot, by said grant or confirmation."

Which instruction the Court refused to give as prayed for, but gave the same, with the following qualification, to wit: "That as between the parties, the transaction between Leavenworth and Parker was *prima facie* evidence of a fraud upon laws existing at the time, and upon the rights of the owners, whoever they may have been."

To which opinion and ruling, refusing said instruction as prayed, and giving said qualification, the defendants duly objected and excepted.

The defendants also at the proper time, prayed the Court to give the jury the following instructions, to wit:

1st. "Even if the Leavenworth grant and confirmation by the council, were fraudulently issued and procured, as between the original parties, yet if Wright afterwards purchased from Leavenworth, for value, and without notice of such fraud, neither Wright nor purchasers under him, for value and without notice, can be affected by such fraud."

2d. "In the same manner, each successive purchaser for value and without notice, would be unaffected by the fraud or notice of fraud of those from whom he purchased."

3d. "Therefore, if Edward Field purchased for value, and without notice of any fraud, he cannot be affected by any fraud in the issuing or confirmation of said Leavenworth grant."

4th. "So, likewise, if the defendant in this suit (Wyman and others), when they leased the premises from Field, had no notice of any fraud, in the issuing or confirmation of said grant, they are unaffected thereby, and the plaintiffs cannot recover against them, upon the ground of such fraud."

And the Court gave the said first and second of said instructions to the jury (substituting for the words "can be affected by such fraud," in said first instructions, the words "Can be excluded from taking as grantees under the Act of the Legislature"), but refused to give to the jury the said third and fourth instructions; to which opinion and refusal to give said 3d and 4th instructions, the defendants duly excepted, and likewise to the said substitution.

The defendants also, at the proper time, prayed the Court to give the jury the following instruction, to wit: "The resolution of the town council, of October 11th, 1848, read in evidence by the defendants, is a confirmation of water lot grants made by Leavenworth, and is not confined to upland lots—if the jury find that said resolution was passed by the council."

Which instruction the Court refused to give as prayed; but modified the same as follows, by striking out the words "Water lot," and adding the words "Unless the testimony in the cause satisfies you this grant was intended to be excepted from the general terms of confirmation;" and gave the said instructions so modified to the jury; to which opinion and refusal, and to the giving of said modification to the jury, the defendants duly objected and excepted.

And the defendants also, at the proper time, prayed the Court to give the jury the following instructions, to wit:—

1st. "The Act of March 26th, 1851, operated as a legislative grant *and confirmation* in the cases therein specified; and if the lot in question was sold or granted on the 25th of September, 1848, by Leavenworth, he being alcalde of San Francisco, and afterwards confirmed by the ayuntamiento or town or city council, and also registered or recorded, on or before the 3d day of April, 1850, in some book of record in the office, custody or control of the Recorder of the county of San Francisco, at the date of the passage of the Act, the said statute operated as a grant *and confirmation*, to the said lot,

to the said Parker, his heirs and assigns, or any person holding under him or them, for the term of 99 years from the passage of the Act; and in such case the verdict must be for the defendants."

2d. "If at the date of the Act of March 26th, 1851, Wright and Botts were the holders and owners of the Leavenworth grant, by purchase and conveyance from Parker to Leavenworth, from Leavenworth to Wright, and from Wright (as to the undivided half) to Botts, the statute operated as a direct grant and confirmation to Wright and Botts."

Which instructions the Court refused to give as prayed; but modified the said 1st instruction by inserting therein the following words, to wit: "If there was no fraud on the part of Parker in obtaining said grant of which his assignees had notice;" and modified the said 2d instruction by adding thereto the following words, to wit: "In case there was no fraud in obtaining of said grant, or if there was such fraud, said Wright and Botts had no notice of the same." And the Court gave to the jury said two instructions with said modifications; to which opinion and refusal, and to the said modifications of said instructions, the defendants duly objected and excepted.

And the defendants prayed that this their bill of exceptions might be signed and sealed by the Court, and made part of the record of this cause, which was accordingly done.

M. HALL McALLISTER, [SEAL.]
Judge Cir. Court U. S., &c.

Sept. 12, 1855.

And afterwards, to wit, on the fifth day of September, in the year one thousand eight hundred and fifty-five, upon the prayer of the defendants, the following writ of error was duly issued in this case, in the words following, to wit:—

UNITED STATES OF AMERICA, to wit:

The President of the United States of America, to the Judge of the Circuit Court of the United States for the Districts of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said Circuit Court before you, between Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, plaintiffs, and G. D. Wyman, Solomon Brenn, William C. Hoff, R. O. Sturdevant, J. D. Arthur, R. Wheeler, J. Tower, William B. Peake, James H. Ray, Gilbert & McComb, and Edward Field, defendants, manifest errors have happened, to the great damage of the said Edward Field, as by his complaint appears: And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Su-

preme Court of the United States, together with this writ, so that you have the same at the Capitol, in the City of Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

[SEAL.] GEO. PEN. JOHNSTON,
Clerk U. S. C. C., D. C.

P. J. EDGAR GRYMES,
Deputy.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Edward Field, Pl'ff in Error.

Endorsed: I allow the within Writ of Error.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dist's of Cal'a.

And afterwards, to wit, on the same day, and in the year last aforesaid, the following citation upon the aforesaid writ of error was duly issued by the Judge of said Court, in the words following, that is to say:—

UNITED STATES OF AMERICA, to wit:

To Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Districts of California, wherein Edward Field is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. H. McAllister, Judge of the Circuit Court of the United States for the Districts of California, at the City of San Francisco, this 5th day of September, in the year of our Lord one thousand eight hundred and fifty-five.

[SEAL.] M. HALL McALLISTER,
Judge Cir. Court U. S. Dists. of California.

Attest: GEO. PEN. JOHNSTON, *Clerk.*
P. J. EDGAR GRYMES, *Deputy.*

Endorsed: "We hereby acknowledge due service of the within Citation in Error, this 5th day of September, 1855.

HOLLADAY & SAUNDERS,
Att'ys for Def'ts in Error.

And on the same day and year last aforesaid, the following *supersedeas bond*, by direction of the counsel for the respective parties, was placed on file in said cause:—

IN THE CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

EDWARD FIELD
v.
PARDON G. SEABURY, WARD M. PARKER & HENRY B. GIFFORD. } In Error.

Know all men by these presents, that we, Charles W. Cook and Edward Jones, of the city of San Francisco, bankers, are held and firmly bound unto the above named Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, in the sum of five thousand dollars, to be paid to the said Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 5th day of September, A. D. 1855.

Whereas the above named Edward Field hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the Circuit Court of the United States for the Districts of California, in a suit in said Court between the said Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, plaintiffs, and G. D. Wyman, Solomon Brenn, William C. Hoff, R. O. Sturdevant, J. D. Arthur, R. Wheeler, J. Tower, William B. Peake, James H. Ray, Gilbert and McComb, and the said Edward Field, defendants:

Now, therefore, the condition of this obligation is such, that if the above named Edward Field shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his pleas, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES W. COOK. [SEAL.]
EDWARD JONES. [SEAL.]

Sealed and delivered in presence of
M. HALL MCALLISTER.

I approve the above bond. September 5th, 1855.

M. HALL MCALLISTER,
Judge Cir. Court U. S. Dists. of Cal'a.

And afterwards, to wit, on the twenty-fourth day of September, in the year one thousand eight hundred and fifty-five, the following agreement and stipulation, by direction of the counsel for the respective parties, was placed upon file in said cause:—

IN THE CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

PARDON G. SEABURY *et als.*
vs.
G. D. WYMAN *et als.*

It is agreed by the parties in this action, plaintiffs and defendants, that the writ of error sued out on the judgment rendered in said action by the said Edward Field, plaintiff in error, against the said Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, defendants in error, shall stand for trial in the Supreme Court of the United States at the now ensuing December term thereof, without notice of trial or argument; and that the plaintiff may assign errors in said Supreme Court at any time before trial, and the defendants in error shall file their joinder in error at or before the calling of the cause for trial; and on failure of the defendants to join in error, the plaintiff may proceed to trial without such joinder; and on failure of the plaintiff to assign errors at or before the calling of the cause for trial, the defendants may move to dismiss the writ of error.

And it is agreed that this stipulation be entered as part of the record of said cause.

Dated September 19th, 1855.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

IN THE CIRCUIT COURT OF THE UNITED STATES
for the Districts of California:

I, George Pen. Johnston, Clerk of the Circuit Court of the United States for the Districts of California, at San Francisco, do hereby certify that the foregoing 164 pages contain a full, correct, and faithful transcript of the record of the proceedings had in the above entitled cause.

In witness whereof I have hereunto set my hand and affixed the seal of said Court, at the Court House in the city of San Francisco, this eleventh day of October, A. D. 1855, and of the Independence of the United States of America the eightieth.

[SEAL.] GEO. PEN. JOHNSTON,
Clerk.

UNITED STATES OF AMERICA, } ss.
Districts of California, }

I, M. Hall McAllister, Judge of the Circuit Court of the United States for the Districts of California, do hereby certify, that Geo. Pen. Johnston, who hath signed the foregoing certificate, is and was on the day of the date of the same, the Clerk of said Court, at the city of San Francisco, duly commissioned and qualified; that his signature above, to said certificate, is genuine; and that the said attestation or certificate is in due form of law.

Dated this 11th day of October, A. D. 1855.

M. HALL McALLISTER,
Judge Cir. Court U. S. Districts of Cal'a.

IN THE SUPREME COURT OF THE UNITED STATES:

EDWARD FIELD, Plaintiff in Error,
vs.
PARDON G. SEABURY,
WARD M. PARKER and
HENRY B. GIFFORD, Defendants in Error.

In Error to the Circuit Court of the United States for the Districts of California.

Comes now the said plaintiff, and says, that in the record and proceedings of the said Circuit Court in the above entitled cause, and in the giving of judgment therein, there is manifest error in this: That it appears by said record that judgment was given by said Circuit Court, against the said plaintiff in error, and in favor of the said defendants in error, to the great damage of said plaintiff in error; whereas, by the law of the land, and the law and custom of the United States, judgment in said cause should have been given in favor of the said plaintiff in error, and against the said defendants in error. And this the said plaintiff is ready to verify.

Wherefore, he prays that the said judgment of said Circuit Court be in all things reversed, annulled, and held for naught, and that the said plaintiff be restored to all he hath lost thereby.

[For map of the beach and water lots of San Francisco.]

UNITED STATES OF AMERICA, to wit:

The President of the United States of America, to the Judge of the Circuit Court of the United States for the Districts of California, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said Circuit Court before you, between Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, plaintiffs, and G. D. Wyman, Solomon Brenn, William C. Hoff,

R. O. Sturdevant, J. D. Arthur, R. Wheeler, J. Tower, William B. Peake, James H. Ray, Gilbert & McComb, and Edward Field, defendants, manifest errors have happened, to the great damage of the said Edward Field, as by his complaint appears: And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the Capitol, in the City of Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

[SEAL.] GEO. PEN. JOHNSTON,
Clerk U. S. C. C., D. C.

P. J. EDGAR GRYMES,
Deputy.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Edward Field, Pl'ff in Error.

SUPREME COURT OF THE UNITED STATES:

December Term, 1855.

EDWARD FIELD, Pl'ff in Error,
vs.
PARDON G. SEABURY *et als.*, Defend'ts in Error. } No. 113. Joinder in Error.

And now come the said defendants in error by S. W. Holladay, their attorney, and say that in the record and proceedings aforesaid there is no error, and of this they pray judgment, &c.

S. W. HOLLADAY,
Att'y for Def'ts in Error.